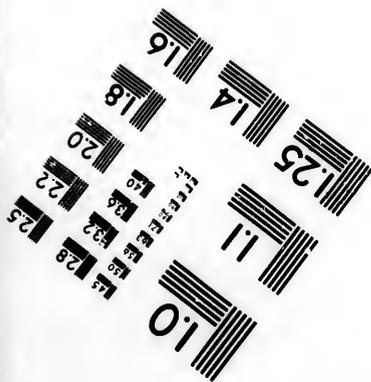
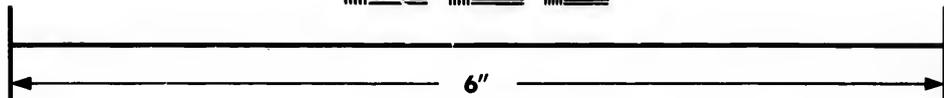
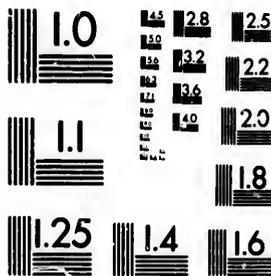


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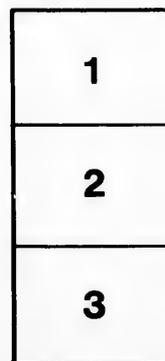
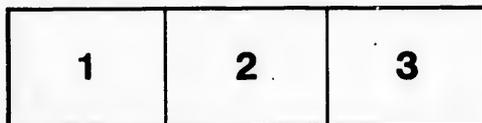
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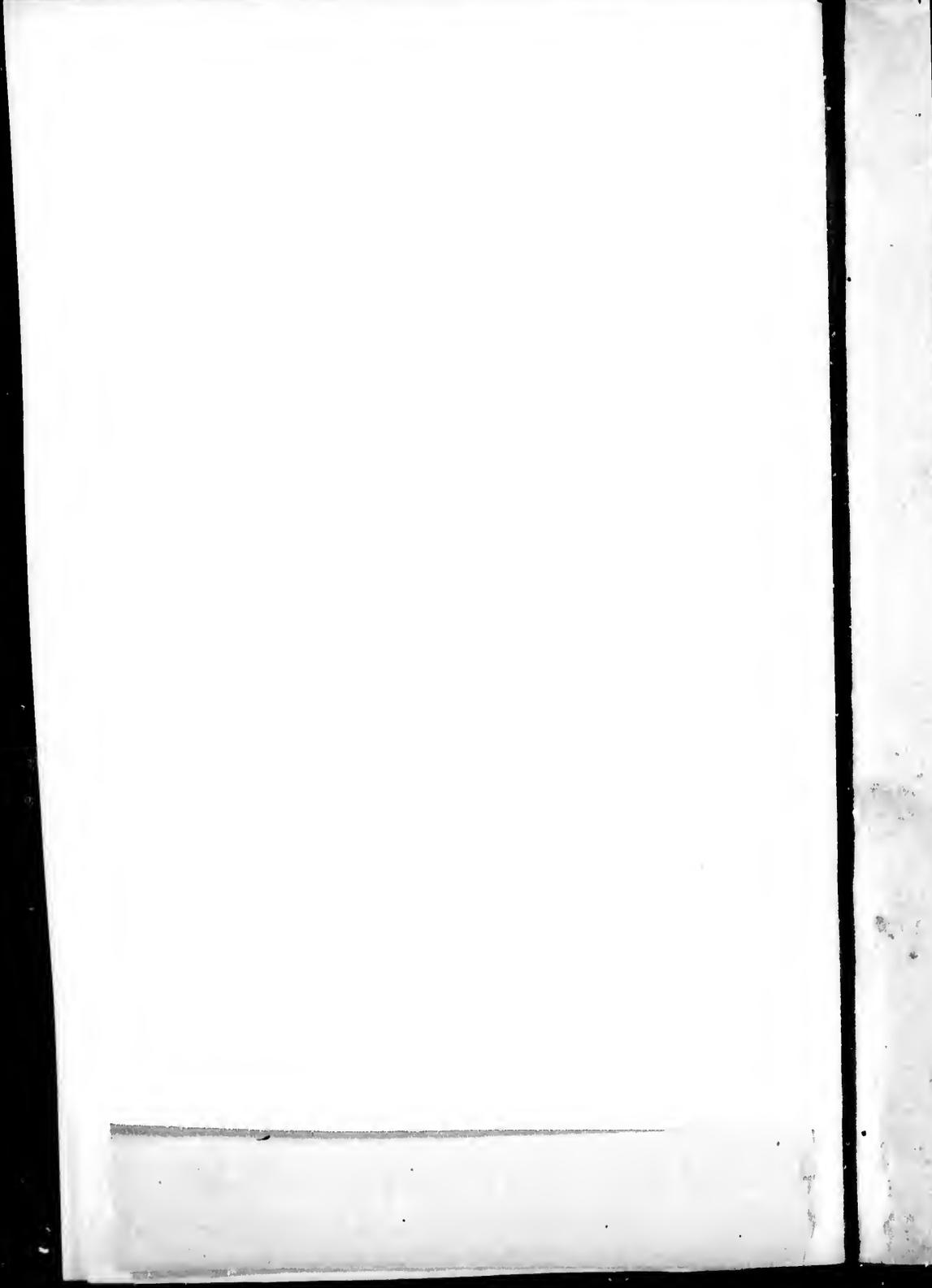
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**REMARKS**  
**ON THE**  
**PETITION OF THE CONVENTION,**  
**AND ON THE**  
**PETITION OF THE CONSTITUTIONALISTS.**

**BY**

**ANTI-BUREAUCRAT.**

---

**MONTREAL :**

**PRINTED AT THE HERALD OFFICE.**

**May, 1835.**

1-1479

## PREFACE.

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The following articles were originally written for the Montreal Herald amid the multifarious occupations of the editor of a daily journal. They are now republished in the form of a pamphlet, that they may be more extensively and more usefully circulated on the other side of the Atlantic.

For many of the facts, which illustrate and support my arguments, I am indebted to the Hon. George Moffatt, whose steady support has more than once presented a handsome and gratifying contrast with the burrowing envy of less distinguished men—to the Hon. Peter M'Gill, whose magnanimity in forgetting, what no other man could have forgotten, has nobly revenged an intemperate attack—and to James Charles Grant, Esq., whose unwavering friendship and unwearied generosity have surpassed the love of a brother.

To Mr. Grant's research, also, I owe the whole of my quotations from republican jurists. On constitutional questions, Mr. Grant, so far as my experience goes, has but few equals in the province, and has, by his vast sacrifices of

time and money, earned the gratitude and the confidence of every ingenuous and intelligent mind.

I would have sent forth this little work anonymously, had not the letter of "An Emigrant" to Mr. Secretary Stanley, which I sent home, last summer, in form of a pamphlet, lost moral weight, by being ascribed to some paid servant or other of the provincial government.

The signature of "Anti-Bureaucrat" may require some explanation.

The self-styled patriots of Lower Canada indiscriminately style every opponent a bureaucrat, or virtually an office holder. In spite of this definition, I feel in my own conscience, that a man may be the enemy of official corruption, without being the friend of revolutionary violence. I extract a fuller explanation from my first editorial article in the Montreal Herald :

"During the last twenty-five years, the British inhabitants of Lower Canada have occupied an awkward and anomalous position. Placed between two factions, the democratic and the official, they have been compelled by circumstances to submit at once to the insolence of the former party and to the injustice of the latter. Feeling that democratic insolence, bold in the consciousness of numerical superiority, was more dangerous than official injustice, tempered by shame or by compunction, they mostly ranged themselves on the side of a vacillating and treacherous executive against the deadly enemies of British institutions, British feelings and British interests.—For want of a collective voice they could not, as a body, proclaim any intermediate and independent opinion.

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While the Canadians spoke through their Assembly, and while the government used, as a mouth-piece, either of two subservient Councils, the British inhabitants, powerless in the legislature, wanted the dramatic unities of time, place and action, and displayed only detached, desultory and discordant efforts."—*Herald of 1st January.*

Such have been my avowed sentiments from the first moment of my public career in this colony; and such sentiments fully justify my assumption of "Anti-Bureaucrat" as a signature.

I have merely to add, that I have achieved my voluntary task without any other reward, than the gratification of having vindicated the cause of truth and order.

ADAM THOM, A.M.

Montreal, May 4, 1835.

ON THE  
PETITION OF THE CONVENTION.

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No. I.

---

INTRODUCTION.

The revolutionists of Lower Canada display a most praiseworthy degree of industry. As a supplement to ninety-two resolutions, which were too long even to be read by men of ordinary patience, they prepared a long and laborious petition to the House of Commons, and republished that respectful and temperate document in London with critical and explanatory notes. Their unwearied perseverance is worthy of a better cause.

Their want of tact, however, sometimes neutralizes their perseverance. Had they confined themselves to simple and pathetic statements of grievances, real or imaginary, they could not have failed to interest in their favour credulous, kind-hearted John Bull; but, by mingling threats with complaints, they have forfeited the sympathy, and roused the indignation of all parties. Liberality has not yet made such progress, as to enable Britons to listen patiently to the menaces of Frenchmen.

As the indiscretion of the patriots has roused such

a feeling among the people of England, one cannot but dread the possibility of passionate legislation on the affairs of Canada, and see the necessity of submitting to the British public a temperate review of the alleged grievances and a plain calculation of the chances of rebellion.

When John Bull finds that he has been provoked by a tempest in a tea-pot, and that the lofty menaces, which make so much noise on the other side of the water, excite here only ridicule and contempt, he will change his wrath into laughter, and magnanimously proceed, as if nothing had happened, to the investigation of complaints and the redress of grievances.

As an individual, connected neither with the provincial government nor with the revolutionary party, I intend, with the permission of the editor of the Herald, to publish, in the columns of that journal, a series of communications, to be afterwards sent home in form of a pamphlet, as an impartial sketch of the actual grievances, whether of Britons or Canadians. For this purpose, I shall take, as a text, the petitions of the respective parties.

ANTI-BUREAUCRAT.

Montreal, 20th April, 1835.

No. II.

---

ON THE PRESUMED NECESSITY OF CONCILIATION.

In my introductory communication, I endeavoured to shew that just views of Canadian affairs were much wanted at home; and I now proceed to clear away the rubbish industriously piled up by the boastful patriots in the way of an equitable adjustment of the conflicting claims of Canadian parties.

The patriots, conscious of the weakness of their cause, have attempted to make threats do the work of arguments, and to intimidate the British Government into most unjust and most mischievous concessions. I am not now bound to prove that the demands of the patriots are unjust or mischievous. My sole object in this communication is to shew the folly and emptiness of the menaces of rebellion.

Lower Canada contains about 400,000 French Canadians and about 150,000 inhabitants of British origin. The Germans and Dutchmen are not so numerous as to be distinguished from the two other races in my summary classification. Mr. Papineau's "people" comprehends a vast majority of Canadians and a very miserable minority of men of British origin. Such, I admit, are the component parts of Mr. Papineau's "people;" but I do

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not admit, that every individual, who shouts for Mr. Papineau, is also willing to fight for him. Talking and fighting, as Mr. Joseph Hume well knows, are very different things.

But if fighting were in the abstract as easy as talking, Mr. Papineau would meet one very formidable obstacle in attempting to arm his followers against the British Government. To say nothing of his want of courage, or his want of money, he would find that any proposal of insurrection would at once open the eyes of his deluded followers to the real nature of his designs, and hurl him for ever from his present bad eminence. Were I not writing for readers on the other side of the water, I should be ashamed to discourse so gravely on the probabilities of a Canadian insurrection. Mr. Papineau's followers, whether French or British, do not generally fathom his ulterior views; but a direct summons to take up arms would lay open the man's real objects to the blindest of his admirers.

Mr. Papineau's Canadian followers are generally well affected towards the Imperial Government; and his British tail, consisting chiefly of runaways from the United States, though not well affected towards the British government or towards any government at all, would certainly not hazard their lives for the establishment of a French republic. The latter, who are equally a disgrace to Canada and to the American republic, are unworthy even of this passing notice; and the loyalty of the former, if it has been shaken at all, has been shaken only by infamous falsehoods. The patriots have actually en-

deavoured to delude their ignorant countrymen into the belief, that every emigrant comes out to Canada with the view of robbing some native or other of his farm. The partial success of so flagrant a misrepresentation throws the keenest ridicule on the "public opinion" of Mr. Papineau's "people."

But I admit, for the sake of argument, the pugnacious and rebellious disposition of Mr. Papineau's "people," and create him, for the occasion, commander in chief of all his able-bodied adherents. What will the field-marshal attempt as his first exploit? Whithersoever he may turn his eyes, he sees a bold front of British breasts ready to receive him. From Gaspé to Hull, the Canadians are surrounded by men of British origin; so that, without taking into account the British inhabitants or the British garrisons of Montreal and Quebec, my brave field-marshal would be, in more than one respect, very like "a scorpion girt by fire," and would, like the real scorpion, sting himself and all his gallant army to death.

As to the probability of success, I quote the Herald:—

"The patriots cunningly, as they imagine, allude to the apparently analogous case of the American Revolution, and discharge a few pop-guns in the ears of his Majesty's Ministers, as a foretaste of another Saratoga. They shut their eyes to the many points of contrast between the American revolution, that has been, and the Canadian revolution, that is to be.

In point of numbers, the Americans were to the inhabitants of the United Kingdom in the proportion of *one to four*; the Canadians, on the contrary

are in the proportion of *one to fifty*. To make out the analogy, Mr. Papineau must prove that one Canadian is as formidable as twelve Americans and a half. After he has proved that an American blow is only 8 per cent., the seigneur's share as it were, of a Canadian whack, he has got a great deal to do before he gets the length of a Saratoga, or even of a Bunker's Hill. The Canadians live not in the woods, but in "a beautiful country and well cleared," like our own dear Scotland, and are more open to foreign attacks than perhaps any people in the world. Crowded as they are on the level banks of the St. Lawrence, and other navigable rivers, they could be reached almost in their most distant settlements by the long forty-eight pounder of a gunboat, wheeling on a pivot and describing successive circles of fire and blood from one end of the seigniories to the other. We cannot but smile at our own seriousness; but, for the edification of the good folks at home, to whom impossibilities may seem possible, even ridiculous and empty threats must be dissected and exposed. Britain moreover, has stronger positions in regard to Lower Canada than what she had in regard to her American colonies. To say nothing of the loyal inhabitants of Lower Canada and of the neighbouring provinces, who would sweep, with the rapidity and force of an inundation, the banks of the St. Lawrence, Britain holds Quebec, the Gibraltar of North America, a fortress which is absolutely impregnable at least to a tumultuary rabble of militia. In the American colonies she had not a single stronghold.

It may be well also to remind Mr. Papineau that the Americans, though incomparably more powerful than the Canadians, were at one time well beaten, and, but for the hereditary spirit of the heroes of Cressy, Poitiers and Agincourt, would have given up the contest in despair. The French proverbially say of the English, that they fight, when they ought to surrender, and conquer, when they

ought to be conquered. Can England return the compliment? Is Louis Joseph Papineau a second George Washington? Have his followers the moral energy of the American insurgents? *Ex ipso dicit orbes animumque ferro* is a motto, applicable rather to Canada as a country, than to the Canadians as a people. The active valour of Frenchmen it would be idle either to depreciate or to praise; but in passive fortitude the fiery Frank must yield to the firm, stubborn, dogged spirit of his hereditary rival. An insurrection is awfully improbable; a successful insurrection is absolutely impossible. The threats, as we have already hinted, are intended chiefly to frighten away emigrants from the happiest and most peaceful country in the world. The weapons of war are merely the tongue and the pen. The swords are still in the shape of plough-shares; the fire-arms are used only for shooting sparrows or powder."

I have said nothing about the share that the British Isles and the other provinces of British America would be disposed to take in the struggle. Britain would, of course, assert her supremacy over her rebellious vassals; while in Upper Canada and the Lower Provinces all parties would be cordially united to keep the command of the St. Lawrence out of the hands of an anti-commercial faction.

But the United States are to assist my field-marshal. The United States will not rashly quarrel with an empire which once already annihilated their commerce, and could, on the shortest notice, annihilate it again. Would the acquisition of Lower Canada be an adequate compensation for the inevitable ruin of their foreign trade? Sound policy, in truth, would make the American republic reject

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Lower Canada as a free gift. The acquisition of the St. Lawrence would seriously injure the western trade of New York, Philadelphia and Baltimore, and would, therefore, be by no means acceptable to the states of New York, Pennsylvania and Maryland. The sectional jealousy, moreover, of the southern states would resist any addition to the already overwhelming power of the northern and the middle portions of the republic. The glittering prize of Lower Canada might dazzle superficial observers; but those, who look below the surface of things, would not be tempted by the dangerous and fatal bait.

But I would wish to impress deeply on the mind of every member of the Imperial Parliament my own conviction, that the French Canadians would not, under any circumstances, call in the aid of the Americans against the British Government. Against the unwelcome tide of British immigration, they are partially protected by the broad Atlantic, the icy barriers of half the year, and Mr. Spring Rice's emigrant-tax-law; but against the torrent of American swarms they could oppose nothing but the shadowy barrier of a parallel of latitude, guarded neither by Mr. Spring Rice nor by Mr. Winter Frost. An American majority would soon give Mr. Papineau enough of his elective principle and his elective institutions.

But the political degradation would be less sensibly felt by Mr. Papineau's "people" than the financial oppression. The revenues, which at present defray or, to speak more correctly, ought to de-

fray the expenses of the provincial administration, would be swallowed up by the general government ; and Mr. Papineau's "people," when directly taxed for the support of the "State Government" of Lower Canada, would find the republican whistle rather expensive.

From these premises I may venture to infer, that Mr. Papineau will never don the warrior's habiliments, in reliance either on his own strength or on American aid.

The British population, however, labours under some real grievances ; and, if the Imperial Government is willing to consult at once policy and justice, I cannot too strongly recommend to its early and serious consideration the well founded complaints of the British and the Irish inhabitants of the province.

ANTI-BUREAUCRAT.

Montreal, April 24, 1835.

### No. III.

---

#### ON THE LEGISLATIVE COUNCIL.

I take the following passage from the commentary of Messrs. Nelson and Chapman on the humble petition of the Convention.

“The first grievance of which the people of Canada complain—a grievance which, in point of mischievousness, by far exceeds all others, which in fact is the parent of a host of complicated evils and abuses—is the vicious constitution of Legislative Councils. Theoretically, that body is said to be chosen by the Crown, (31 Geo. 3, chap. 31, sec. 3,) but practically it is self-elected. A very few words will explain this.”

For the sake of argument, I admit that the Legislative Council is “self-elected,” and agree with Messrs. Nelson and Chapman in denouncing its “vicious constitution” as incurable by any “par-  
tial remedy.” But my logic, to satisfy my conscience, must be even-handed, and must not be contented with merely the one-sided application of a general principle. If “self-elected” bodies are mischievous and ought to be abolished, I must extend the principle, with or without the consent of Messrs Nelson and Chapman, both to the legislative assembly, that does exist, and to the legislative council, which is to exist in the golden age of elec-

tive institutions. Can any man, can even any patriot of common understanding, deny that the Assembly of Lower Canada is, in the strictest sense of the expression, virtually "self-elected?" Can any reasonable being doubt, that the liberal members, as they absurdly and dishonestly style themselves, of the assembly are nominated and appointed by the dominant majority? Who made the obscure editor of the Vindicator a law-giver? The electors of Yamaska? No. The mandate of Mr. Papineau "Elect the bearer"? Yes. Mr. Papineau's desire to cover the real nature of the contest by the mask of a few English names, however worthless, induces him to force on his vassals candidates entirely unknown and thus blindly to prove that the assembly is virtually "self-elected." I give the instance of Dr. O'Callaghan's nomination, rather to illustrate my meaning to readers on the other side of the water, than to establish on this side of it the palpable truth of my position. Mr. Papineau's faction, which was originally organized to influence the elections in the Island of Montreal, has extended its ramifications over almost the whole province so as to command the mass of the elections. Whether Mr. Papineau and his colleagues echo the real opinions of the "people" of Lower Canada, I do not consider of any moment to my present argument. Whether they do so or not, I have proved from stubborn facts, that a majority of the assembly is "self-elected." It may be necessary to apprise people at home, where majorities and mino-

rities of the same house fluctuate, and, to a certain extent, amalgamate with each other, that "THE MAJORITY" of the assembly of Lower Canada is "THE HOUSE." It is factiously banded together for the embarrassment of the government, for the legal oppression of the loyal population and for the illegal appropriation of the public revenue; and, though, on trifling points, Mr. Vanfelson, leader of the Quebec wing, and Mr. Papineau, commander of the Montreal wing, sometimes disagree and call each other "liar" with the most amiable impunity, yet the two wings are always ready to present an unbroken phalanx to a common enemy.

If, then, the Assembly be "self-elected," it ought, on the unkind showing of Messrs. Nelson and Chapman, to be abolished. It is too bad in the emissaries of the Assembly to put it into "Schedule A." But this is not all their wickedness.

If the assembly is "self-elected," a legislative council, returned by the nominal constituents of the assembly, must also, be "self-elected." Now as a "self-elected" body ought to be abolished, Mr. Papineau may save some trouble by not establishing an elective council at all.

The argument, therefore, of Messrs. Nelson and Chapman rids the country of both houses of the legislature, and revives the good old times of a governor and council. Messrs. Nelson and Chapman abolish the present legislative council. Following humbly in their wake, I have abolished the present assembly and stifled in the bud the proposed elective council.

Such of my readers, as have merely a vague notion of the American Constitution, may require some explanation as to my presumed identity of the existing assembly and an elective council. These readers may think, that, because the two houses of Congress are not identical in opinions, the assembly and an elective council would not be so.

Before I attempt to explain the several grounds of distinction between the two Houses of the American Congress, I shall quote the opinion of the great Jefferson, in regard to the Constitution of his native state Virginia. That opinion will clearly show that even the leader of the democracy; properly so called, strongly disapproved such a despotism, as the identity of the Assembly and the Legislative Council could not fail to establish. "All the powers of government, legislative, executive and judiciary, result to the legislative body. The concentration of these in the same hands is precisely the definition of a despotic government. It will be no alleviation, that these powers will be exercised by a plurality of hands, and not by a single one. One hundred and seventy-three despots would surely be as oppressive as one. Let those who doubt it turn their eyes on the republic of Venice. An elective despotism is not the government we fought for; but one, which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of magistracy, as that no one could transcend their legal limits without being

effectually checked and restrained by the others."— At the date of these observations, Virginia had but one legislative body ; and experience proves that two identical legislative bodies in Lower Canada would, like the Assembly of Virginia, soon usurp "all the powers of government, legislative, executive and judiciary." But we hasten to consider the several grounds of distinction between the two houses of the American Congress.

Circumstances, altogether unconnected with general principles, fortunately compelled the Americans to divide the national legislature into two houses.

The conflicting pretensions of the larger and the smaller states could not have been reconciled in one and the same legislative body. Had each state, according to the claims of the smaller states, returned the same number of representatives, a small minority of the people might have ruled a large majority. Had each state, according to the claims of the larger states, returned a number of members proportioned to its population, a small minority of the states might have ruled a large majority of them. The former scheme by fettering the popular will, would have been an oligarchy ; the latter, by undermining the independence of the respective states, would have been not a federal republic but a consolidated democracy. The conflicting claims, after much difficulty, were reconciled by giving the senate to the *states* and the house of representatives to the *people*. In the upper house, therefore, the states are equal, and have two members each ;

while, in the lower one, each state has a number of representatives proportioned to its population. In the senate, little Delaware is equal to New York ; in the house, New York is equal to forty Delawares.

The framers of the constitution, not contented with this radical and unavoidable distinction between the two branches of the national legislature, made these bodies in almost every respect as different as two elective bodies can be made. They enacted, that every second year the senate should be dissolved to the amount of one third of its members, and the house of representatives wholly dissolved. They provided, moreover, that the representatives should be elected by the people, and the senators by the legislatures of their respective states. By this last provision, they, in effect, rendered the election of senators independent of any momentary excitement, so that the two delegations of the same state to the respective houses of Congress might differ essentially in character.

If my views of the predominant influence of the revolutionary faction be correct, all the ingenuity of man could not prevent the perfect identity of two elective houses of legislation in Lower Canada.

I have hitherto argued on the assumption that the legislative council is virtually "self-elected." In my next article, I shall prove that it is not so.

ANTI-BUREAUCRAT.

April 28, 1835.

## No. IV.

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### ON THE LEGISLATIVE COUNCIL.

In my last communication, I proved that the charge of being "self-elected" applied with more force to the Legislative Assembly than to the Legislative Council; that an elective Council, however constituted, would be a counterpart of the Assembly; and that the admitted collisions between the two houses of the American Congress formed no argument against the alleged identity of two elective branches of the Legislature of Lower Canada. I proved all these points on the assumption that the Legislative Council, as at present constituted, is "self-elected."

I now proceed to show, in answer to Messrs. Nelson and Chapman, the interpreters of the "humble petition," that the Legislative Council is not, in any sense of the language, "self-elected."— Listen to the interpreters:—

One of the duties of the Executive Council is to advise the Governor. The Governor, on his first arrival, is presumed to be ignorant of the condition of the colony. The Executive Council is his board of instructors. When an office becomes vacant, the Governor applies to his "Privy Council"—*their own class is naturally represented as containing the only persons eligible or qualified to fill the*

*office.* From this mode of filling up all offices, the two Councils, the judiciary, and the office-holders, have become identical, not merely in point of interest, but in point of fact. The Executive Council, for instance, consists of eight members: two are Legislative Councillors also—and all are lucrative place-holders, with the exception of two, and of these two, one enjoys the distinction of independence, only in consequence of having been dismissed from the office he did hold for malversation thereof.

This passage is based on the tacit assumption, that the Executive Council, in regard to the dispensing of executive patronage, is a council not merely of ADVICE but of CONTROL. On this point, I derive my information from letters published by the ablest and most independent man in the colony, under the signature of "A Citizen." By the Constitutional Act, the Executive Council "is made a Council of Control, as to the erection of parsonages and the endowment thereof." "By the King's instructions, it is also a Council of Control, so far as the granting of lands is concerned. It is much to be lamented that it was not also made a Council of Control, as to the nomination to public offices, and as to the removal from them."

The last sentence of my quotation, by exhibiting the independent feeling of "A Citizen," must add weight to his statements.

Since, then, the Executive Council does not, either negatively or positively, dispense the executive patronage, I can afford to concede the assumed identity of the two Councils, without assenting to the inference of Messrs. Nelson and Chapman, as

to the "self-elected" character of the Legislative Council. The constitutional cause is so strong, that it can afford to argue almost every point on the principles of its adversaries. As the Legislative Council is appointed not by the Executive Council, but by the Governor, it cannot, by any perversion of language, or by any extravagance of hypothesis, be said to elect itself. Whether Messrs. Nelson and Chapman did, or did not, understand the true functions of the Executive Council, I neither know nor care; but their phraseology and their argument equally tend to produce false impressions, as to the nature of the Executive Council, on the minds of their readers. They say, that "The Executive Council is his board of instructors," and they indirectly assert that the Executive Council controls the appointment of Legislative Councillors.

I have hitherto, for the sake of argument, admitted the assumed identity of the two Councils. I now proceed to prove that such identity neither actually nor virtually exists.

The commentators, with the characteristic dishonesty of self-styled liberals, attempt ingeniously to confound the past, however corrupt, with the present, however pure. To exhibit the contrast, I again quote the elegant language of "A Citizen." Speaking of the past (1792), "A Citizen" says, "The surviving members of the Legislative Council, established under the authority of the 14th of the King, with but few, if any, additions, came to be appointed under the authority of the Constitu-

tional Act of 1791 ; and carried into the body erected under the last mentioned act, all the habits and feelings which had been formed under the operation of the system established by the 14th of the King. They were all, or nearly all, placemen, and were nominated by the Governor. The right and sound policy of keeping apart the Executive and Legislative Councils existed on paper, but no where else, as all, or nearly all, the Executive Councillors were also members of the Legislative Council." Speaking of the present (1832), "A Citizen," in the same letter, adds, "Under present circumstances, one may say (and it is a subject of congratulation to the country) that the power of the official classes in the Legislative Council is utterly and forever annihilated." "UTTERLY AND FOR EVER," so that the Legislative Council, that is a decided majority of it, not only is, but will continue to be, entirely independent of the executive government. To show the soundness of the able and independent writer's anticipation, I may add, that, since the publication of his letters, six or eight gentlemen, one and all independent of the government, have been introduced into the Legislative Council.

The reader on the other side of the Atlantic cannot fail to perceive, that Messrs. Nelson and Chapman attack the Legislative Council for being, not what it is, but what it was. Mr. Papineau and his colleagues, are, in truth, more hostile, than ever, to the Legislative Council, *because it has been reformed*. The following remarks of the editor of the Herald will save me the trouble of further explanation of this parade :

“ We venture to assert, in defiance of the renowned economist of truth and honesty, that Mr. Stanley does not now believe that the legislative council “ IS at the root of all the evils in the province.” A change of character in any body produces in every reasonable being a change of opinion in regard to that body ; and the renowned economist of truth and honesty knows that a very considerable change of character has taken place in the legislative council. The judges, with the exception of the Chief Justice, have withdrawn themselves ; gentlemen, equally independent of the government and of the patriotic faction, have been deservedly selected to purify and adorn the council. Thus have the official members of that body been doubly neutralized—negatively by the retirement of the judges and positively by the introduction of independent colleagues.

We know that the task-masters of our learned contemporary condemn the council as having been rendered more mischievous by the recent changes of its character ; but we doubt, whether Mr. Stanley concurs with the gentlemen in their opinion.

It may be some consolation to them to know that we do most cheerfully and cordially believe that the legislative council is now more mischievous than ever, not to the country but to the clique, not to popular liberty but to official corruption, not to the cause of justice and order but to the cause of oppression and confusion.

While the legislative council was identified with the government through the servile fears of a majority of its members, the assembly had to encounter but the one easy task of subduing to its will the executive, provincial or imperial. To a body of official men the nod of a governor or a colonial secretary was a law, more powerful than any other law, more powerful than consistency or honor or truth or justice. Now, however, the subjugation of the executive, which the support of an independent bo-

dy, when it merits that support, renders less easily subdued, does not imply the subjugation of the council ; so that the assembly has to fight two battles instead of one, to meet two defeats instead of a victory. Hence the council is denounced as being more mischievous than ever. *Hinc illæ lacrymæ.*

This quotation is the more apposite, as the article, from which I have taken it, was intended to convict the editor of the Vindicator of the crime of Messrs. Nelson and Chapman, the dishonesty of confounding past corruption with present reformation. Because in April 1829, before the report of the Committee of 1828 could be carried into effect, Mr. Stanley entertained certain opinions in regard to the Legislative Council, the editor of the Vindicator maintains, that Lord Stanley in 1835 cherishes, in spite of a change of circumstances, the identical opinions of Mr. Stanley of 1829.

Having thus cleared away preliminary obstacles, I now proceed directly to prove, that the Legislative Council is neither virtually nor actually identical with the executive Council, neither virtually nor actually dependent on the government.

The patriots, I am aware, sometimes condescend to avail themselves of the sophism, that every legislative Councillor, having been appointed by the governor, is dependent on the Crown. The councillors, as such, are appointed for life, and, so far as political promotion is concerned, have less reason to be subservient to the sovereign than any private individual of talent, education and wealth. The sophism does not deserve any farther consideration. It refutes itself.

The statement of Messrs. Nelson and Chapman disproves, without any argumentative exposure, the alleged identity of the two Councils. A Legislative Council of *thirty-six* members contains *two* Executive Councillors; an Executive Council of *eight* members contains *two* Legislative Councillors. Two compounds are identical, when the larger contains an *eighteenth* part of the ingredients of the smaller, and the smaller a *fourth* part of those of the larger. Oh chemistry! Oh mathematics! Oh common sense! Oh Messrs. Nelson and Chapman!

I have already shewn incidentally on the disinterested testimony of "A Citizen," that the Legislative Council is independent of the government.

Of *thirty-six* members, only *ten* hold official situations. Since 1829 have been appointed *twenty-one* legislative councillors, unpolluted by the name of a single officer of the government. So unvarying a course of liberal policy has not only rendered the legislative council substantially independent, but, what is perhaps equally important, clearly demonstrates the disposition of the government not to avail itself improperly even of subservient votes. Such a disposition is often brought into play by the culpable listlessness of many independent members, who, by absenting themselves, enable the government to command a majority, & thus to shew in bold relief its disinterested forbearance. Public opinion, too, is more active and intelligent, than at one time it was. Thus writes "A Citizen" in 1832. "It is not more than five years since strangers have

been admitted to the debates of the legislative council, and it is only since the opening of the present session of the legislature that we can read them in the public newspapers. These are happy indications, and shew a great and salutary change in the public opinion."

Having thus proved that the Legislative Council, as at present composed, is independent of the government, and that an elective council would be dependent on the assembly, or rather a counterpart of it, I close this communication with the opinions of two American writers in favour of a second branch of the legislature, independent as well of the lower branch as of the Executive.

One of these republicans, in treating of the senate, thus eloquently expresses himself.

"Another and most important advantage arising from this ingredient is, the great difference which it creates in the elements of the two branches of the Legislature; which constitutes a great desideratum in every practical division of Legislative power. In fact, this division (as has been already intimated) is of little or no intrinsic value, unless it is so organised, that each can operate as a real check upon undue and rash legislation. If each branch is substantially framed upon the same plan, the advantages of the division are shadowy and imaginative; the visions and speculations of the brain, and not the waking thoughts of statesmen or patriots. It may be safely asserted, that for all the purposes of liberty, and security of stable laws, and of solid institutions, of personal rights, and of the protection of property, a single branch is quite as good as two, if their composition is the same, and their spirit and impulses the same. Each will act as the

other does ; and each will be led by some common influence of ambition or intrigue or passion, to the same disregard of public interests and the same indifference to the prostration of private rights. It will only be a duplication of the evils of oppression and rashness with a duplication of obstruction to effective redress. In this view the organization of the Senate becomes of inestimable value" Again he says, "The improbability of sinister combination will always be in proportion to the dissimilarity of the genius of the two bodies : and therefore every circumstance consistent with harmony in all proper measures, which points out a distinct organization of the component materials of each, is desirable."

The other, treating of the necessity of placing the powers of government in different hands, says :

"The division of the Legislature into two separate and independent branches, is founded on such obvious principles of good policy, and is so strongly recommended by the unequivocal language of experience, that it has obtained the general approbation of the people of this country. One great object of this separation of the Legislature into two houses acting separately, and with co-ordinate powers, is to destroy the evil effects of sudden and strong excitement and of precipitate measures, springing from passion, caprice, prejudice, personal influence, and party intrigue, and which have been found by sad experience, to exercise a potent and dangerous sway in single assemblies. A hasty decision is not so likely to arrive to the solemnities of a law when it is to be arrested in its course and made to undergo the deliberation, and probably the jealous and critical revision, of another and a rival body of men, sitting in a different place, and under better advantages, to avoid the prepossessions and correct the errors of the other branch. The Legislature of Pennsylvania and Georgia con-

sisted originally of a single house. The instability and passion which marked their proceedings, were very visible at the time, and the subject of much public animadversion; and in the subsequent reform of their constitutions, the people were so sensible of this defect, and of the inconvenience they had suffered from it, that in both States a Senate was introduced. No portion of the political history of mankind is more full of instructive lessons on this subject, or contains more striking proofs of the faction, instability, and misery of States under the dominion of a single, unchecked Assembly, than those of the Italian Republics of the middle ages, and which arose in great numbers, and with dazzling but transient splendour, in the interval between the fall of the Western and Eastern Empire of the Romans. They were all alike ill-constituted, with a single unbalanced Assembly. They were all alike miserable, and ended in similar disgrace. Many speculative writers and theoretical politicians about the time of the commencement of the French revolution, were struck with the simplicity of a Legislature with a single Assembly, and concluded that more than one House was useless and expensive. This led the elder President Adams to write and publish his great work, entitled 'A Defence of the constitutions of Government of the United States,' in which he vindicated with much learning and ability the value and necessity of the division of the Legislature into two branches, and of the distribution of the different powers of the Government into distinct departments. He reviewed the history and examined the construction of all mixed and free Governments, which had ever existed, from the earliest records of time, in order to deduce with more certainty and force this great practical truth, that single assemblies without check or balance, or a Government with all authority collected into one centre, accord-

ing to the notion of Mr. Turgot, were visionary, violent, intriguing, corrupt, and tyrannical dominations of majorities over minorities, and uniformly and rapidly terminating their career in a profligate despotism."

As this communication is already too long, I must postpone the farther consideration of the subject till tomorrow.

ANTI-BUREAUCRAT.

April 29, 1835.

ON THE LEGISLATIVE COUNCIL.

Having proved, in my last communication, that the Executive Government does not apply to any sinister purpose its partial influence in the Legislative Council, I now proceed to shew that the Executive Government ought to be represented in the Legislature. On this subject, I am happy to avail myself, for the sake both of myself and of my readers, of the opinion of an enlightened republican. An American Judge, in commenting on the practicable means of preventing the encroachments of the Legislature on the Executive and the Judiciary, says :—

“ On the other hand, if an appeal to the people, or a Convention, is to be called only at great distances of time, it will afford no redress for the most pressing mischiefs. And if the measures which are supposed to be infractions of the Constitution, enjoy popular favour, or combine extensive private interests, or have taken root in the habit of the Government, it is obvious that the chances of any effectual redress will be essentially diminished.

“ But a more conclusive objection is, that the decisions upon any such appeal, would not answer the purpose of maintaining or restoring the Constitu-

tional equilibrium of the Government. The remarks of a certain periodical on this subject are so striking that they scarcely admit of abridgement, without impairing their force: 'We have seen that the tendency of Republican Governments is to the aggrandizement of the Legislature, at the expense of the other departments. The appeals to the people, therefore, must usually be made by the executive and judiciary departments. But whether made by one or the other, would each side enjoy equal advantages on the trial? Let us view the different situations. The members of the executive and judiciary departments are few in number, and can be personally known to a small part only of the people. The latter, by the mode of their appointment, as well as by the nature and permanency of it, are too far removed from the people to share much in their professions.

"The former are generally objects of jealousy, and their administration is always liable to be discoloured and rendered unpopular. The members of the legislative department, on the other hand, are numerous. They are distributed and dwell among the people at large. Their connexions of blood, of friendship, and of acquaintance embrace a great proportion of the most influential part of the society. The nature of their public trust implies a personal weight with the people, and that they are more immediately the confidential guardians of their rights and liberties. With these advantages it can hardly be supposed that the adverse party would have an equal chance of a favourable

issue. But the legislative party would not only be able to plead their case most successfully with the people; they would probably be constituted themselves the judges.

“ The same influence that had gained them an election into the Legislature would gain them a seat in the Convention. If this should not be the case with all, it would probably be the case with many, and pretty certainly with those leading characters on whom every thing depends in such bodies.

“ The Convention, in short, would be composed chiefly of men, who had been, or who actually were, or who expected to be, members of the department, whose conduct was arraigned. They would consequently be parties to the very question to be decided by them.”\*

“ If, then, occasional or periodical appeals would not afford an effectual barrier against the inroads of the Legislature upon the other departments of the Government, it is manifest that resort must be had to some contrivances in the interior structure of the Government itself, which shall exert a constant check, and preserve the mutual relations with each other. Upon a thorough examination of the subject, it will be found that this can be best accomplished by an occasional mixture of the powers of each department with that of the others, while the separate existence and constitutional independence of each are fully provided for. Each department should have a will of its own, and the members of each should have but a limited agency in

the acts and appointments of the others. Each should have its own independence secured beyond the power of being taken away by either, or both of the others. But, at the same time, the relations of each to the other should be so strong that there should be a mutual interest to sustain and protect each other. There should not only be constitutional means, but personal motives, to resist encroachments of one, or either of the others.

“ Thus ambition would be made to counteract ambition ; the desire of power to check power ; and the pressure of interest to balance an opposing interest.

“ There seems no adequate method of producing this result, but by a partial participation of each in the powers of the other ; and by introducing into every operation of the Government in all its branches, a system of checks and balances, on which the safety of free institutions has ever been found essentially to depend. Thus for instance, a guard against rashness and violence in legislation has often been found, by distributing the power among different branches, and each having a negative upon the other. A guard against the inroads of the legislative power upon the executive, has been in like manner applied by giving the latter a qualified negative upon the former ; and a guard against executive influence and patronage, or unlawful exercise of authority by requiring the concurrence of a select council or a branch of the legislature in appointments to office, and in the discharge of other high functions, as well as by placing the command of the revenue in other hands.

The usual guard, applied for the security of the judicial department has been in the tenure of office of the judges, who commonly are to hold office during good behaviour. But this is obviously an inadequate provision, while the Legislature is entrusted with a complete power over the salaries of the judges, and over the jurisdiction of the courts, so that they can alter or diminish them at pleasure. Indeed the judiciary is naturally, and almost necessarily (as has been already said) the weakest department. It can have no means of influence by patronage. Its powers can never be wielded for itself. It has no command over the purse or the sword of the nation. It can neither lay taxes, nor appropriate money, nor command armies, nor appoint to offices. It is never brought into contact with the people by the constant appeals and solicitations, and private intercourse, which belong to all the other departments of government. It is seen only in controversies, or in trials and punishments. Its rigid justice and impartiality give it no claims to favour, however they may to respect. It stands solitary and unsupported, except by that portion of public opinion which is interested only in the strict administration of justice. It can rarely secure the sympathy, or zealous support either of the Executive or the Legislature. If they are not (as is not unfrequently the case) jealous of its prerogatives, the constant necessity of scrutinizing the acts of each, upon the application of any private person, and the painful duty of pronouncing judgment, that their acts are a departure from the law or constitution,

can have no tendency to conciliate kindness or nourish influence.

“ It would seem, therefore, that some additional guards would, under such circumstances, be necessary to protect this department from the absolute dominion of the others. Yet rarely have any such guards been applied; and every attempt to introduce them has been resisted with a pertinacity, which demonstrates how slow popular leaders are to introduce checks upon their own power; and how slow the people are to believe, that the judiciary is the real bulwark of their liberties.

“ In some of the states the judicial department is partially combined with some branches of the Executive and Legislative departments; and it is believed that in those cases it has been found no unimportant auxiliary in preserving a wholesome vigour in the laws, as well as a wholesome administration of public justice.”

It is not as the advocate of the government, but as the supporter of my own conscientious opinions, that I argue for the practical intermixture of the three great branches of the civil government, the executive, the legislative and the judiciary; and I do so with the more diffidence, as some gentlemen, of whose friendship any one may be proud, are decidedly opposed to such an intermixture.

Such an intermixture exists in England according to the ordinary forms of the constitution. It exists in France by an anomalous violation of constitutional principles. It exists, to a certain extent, even in the American republic—the Vice President, the se-

cond member of the Executive Government, being President of the Senate, and the Senate, as a whole, being a branch as well of the executive government as of the legislature.

If a digression may be pardoned, I must take this opportunity of suggesting, in reference to my yesterday's communication, that, in the neighbouring republic exists the perfect identity of the Legislative and Executive Councils, which is falsely stated by Messrs. Nelson and Chapman to exist in Lower Canada. Such an identity does not exist in any other free country, so that the offensive identity is part and parcel of the very institutions, envied and coveted by the consistent and intelligent revolutionists of Lower Canada. It may be necessary to apprise some of my readers, that the SENATE IS A COUNCIL OF CONTROL AS TO THE APPOINTMENT OF PUBLIC OFFICERS. In other words, the legislative council is an executive council, armed, too, with higher powers than those of the executive council of Lower Canada. Let me now pass from analogy to reason.

The absolute separation of the three great departments of civil government must have the unfortunate effect of excluding the ablest men of the country from the most powerful and most dangerous department, the legislature. Who ought to be appointed judges? The most learned and most upright lawyers. Who ought to hold political or diplomatic offices? The most enlightened and most consistent statesmen. The system of absolute separation, therefore, necessarily com-

mits the fearful power of making laws for the regulation of property, liberty and life to second-rate professors of law and politics. Exclude his Majesty's Ministers from the two Houses of the Imperial Parliament; and, by taking away a tithe of the members, you must take away a full half of the talent. But that is not the whole mischief. The talent that is left is all on one side; so that the system of absolute separation would inevitably make an opposition morally and intellectually overwhelming, and produce a succession of administrations, as rapid as that of the scenes in a puppet-show.

Having now discussed, at some length, the subject of the Legislative Council, as it is, as it will probably continue, and as Mr. Papineau wishes it to be, I shall in my next communication, consider some of the alleged practical "abuses of the Council."

To those, who feel, as every loyal man feels, that the Legislative Council is the real and only constitutional bulwark of the country, I need not apologise for giving so protracted a discussion of its character.

ANTI-BUREAUCRAT.

April 30, 1835.

No. VI.

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ON THE ALLEGED ABUSES OF THE LEGISLATIVE COUNCIL.

“The laws,” say Messrs. Nelson and Chapman, “which are conceived by the people to be necessary for their common welfare are rejected by the Council.” The plain meaning of the quoted passage is, that bills, which have been sanctioned by the Assembly, are rejected by the Council. The candour of the paraphrastic language about the “people” must be obvious to the most careless readers of my former letters.

The object of Mr. Papineau and his accomplices is manifestly to have a Council that shall register the decrees of the Assembly. Such, I have already proved, would an elective Council be.— That an elective Council, therefore, would be at least useless, is self-evident; but my quotations from republican writers prove that the concentration of all power in one legislative body, which must be the result of an elective Council, is positively subversive of public liberty.

In discussing the charge against the Council for having rejected or amended bills, I shall be more anxious to dissect and expose the motives of the revolutionists, than to enter into a minute investigation of each and every bill. I shall select two or

three of the bills, as illustrations and proofs of my general remarks.

I copy the tabular statement of Messrs. Nelson and Chapman :—

Statement of the number of bills, which, having originated in the House of Assembly, were either rejected by the Legislative Council, or amended so as to procure their final rejection by the Assembly—exhibiting the obstructive character of the said Council.

YEAR,	Rejected by the Council.	Amended by Council.	TOTAL.
1822	8	0	8
1823	14	2	16
1824	12	5	17
1825	12	5	17
1826	19	8	27
1827	No Session.	No Session.	No Session.
1828 } 1829 }	16	8	24
1830	16	8	24
1831	11	3	14
1832	14	8	22
<b>TOTAL,</b>	<b>122</b>	<b>47</b>	<b>169</b>

The Council is disingenuously accused of having virtually rejected 169 bills. Now, even according to the table, what are the facts?

Of these bills the Assembly had rejected *forty-seven*, and the Council *a hundred and twenty-two*. The excess of "obstructive character," therefore, on the part of the Legislative Council was the rejection, not of *a hundred and sixty-nine* but of *seventy-five* bills. I may, moreover, ask, of what units the sum total is composed. In every session,

the rejected bills of the preceding one were again brought forward ; so that, instead of a *hundred and sixty-nine* bills, the sum total could not have exceeded *thirty* or *forty* bills. By noticing the perfect identity of 1824 and 1825, and of 1828—29, and 1830, an intelligent reader must have gathered the truth from the very table of Messrs. Nelson and Chapman.

The Assembly, eager to accumulate charges against the Legislative Council, has actually condescended to pass confessedly pernicious bills, relying on the "obstructive character" of the upper house. On this point I quote the words of "A Citizen," whose evidence is the more valuable, as the writer, with the natural indignation of an ingenuous mind, denounces the by-gone domination of the official party.

*I must, at the same time, say, that the charge contained in the petitions to which this report applies, against the Legislative Council, for not having passed useful bills sent up to them by the Assembly, was, if not in all, at least in very many instances, entirely without foundation. To enter into the grounds of this opinion, would much exceed the limits of this paper, inasmuch as it would necessarily involve an investigation and examination of the various public measures, the rejection of which is complained of by the Assembly.—Ab uno disce omnes.—A bill for a new organization of the courts of justice, was introduced by the Honorable Dennis Benjamin Viger, then a member of the Assembly, and passed for several successive years by that body, and sent up to the Legislative Council, where it was rejected.*

*Seeing the temper of mind in which the Legislative Council then was, the Assembly became afraid, that,*

*although the Council had oftentimes rejected it, (and I believe that no man can read it without saying they rightly rejected it) they would now adopt it, and that the whole judicial system would be thrown into absolute and irretrievable confusion; they, therefore, found themselves constrained to reject the bill in question, by a large majority, in the season immediately after the publication of the Canada Report.*

On the subject of the assembly's rejection of bills, which the council had amended, I must be a little more explicit.

The assembly has, for many years, systematically attempted to usurp the whole power of legislation. With this view, it has embarrassed the government by refusing the supplies, obstinately maintained the absurd and pernicious system of temporary laws, and deemed any amendment, proposed by the council, in one bill, a just ground for rejecting any given number of bills. The last remark, however incredible it may seem, is literally true. During the last session, a mass of temporary bills, which were to expire on 1st May, were huddled into one bill, with the view either of compelling the council to pass them all or of incurring the odium of causing the rejection of many useful bills. It will amuse and astonish my readers in England to know, that the council's dislike of the Jury Bill involved the rejection of the bill for collecting tolls on the Lachine canal.

To illustrate my remarks as to the monopolising ambition of the Assembly, I take the first of the bills, enumerated by Messrs. Nelson and Chapman.

“ 1.—An Act to regulate the office of Receiver-General. (The people had already been robbed by one Receiver-General, Sir J. Caldwell, and desired security for the future.)”

One would suppose that the legislative council had refused to exact security from the Receiver-General. Such a supposition, however, would be diametrically opposite to the facts. The bill, as it was sanctioned by the assembly, would virtually have prevented the Receiver-General from finding security; an amendment, proposed by the council, would have enabled him to do so.

The bill mortgaged to his Majesty the real property of the sureties *for ever*; the amendment released the sureties *at the expiration of eighteen months* after the death or resignation of the Receiver-General. The obligation of the bill would not have been undertaken by any prudent man; that of the amendment would have had a safe and definite limitation. Land subject to a perpetual mortgage could not be sold, unless under very disadvantageous circumstances; and the effect of the bill, in short, would have been to deter men from becoming sureties and to circumscribe His Majesty's prerogative.

It may be strongly doubted, whether even the law for the ratification of titles would clear real property from his Majesty's mortgage, for his Majesty, besides being generally a privileged creditor, never loses a right through prescription.

ANTI-BUREAUCRAT.

Montreal, 2d May 1835.

No. VII.

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ON THE ALLEGED ABUSES OF THE LEGISLATIVE COUNCIL.

In resuming the consideration of the bills, rejected or amended by the Legislative Council, I must again express my intention, rather of exposing the disingenuousness of Messrs. Nelson and Chapman, the emissaries of the revolutionary faction, than of entering on a minute discussion of the several bills. If I can convict my opponents of disingenuousness, I shall spare myself and my readers the necessity of wading through studied misrepresentations of individual facts, for disingenuousness is at once a proof of a bad disposition and a confession of a bad cause.

Messrs. Nelson and Chapman, then, have been guilty of threefold disingenuousness.

Firstly—In the list of enumerated bills, they confound those, that had been rejected, with those, that had been only amended, and, by prefacing the list with something about the laws “thus rejected,” manifestly wish to make the reader believe the council guilty of having rejected the whole of them. In my last letter I proved most satisfactorily, that the very first bill of the list, so far from having been “rejected” by the council, had been amended

by that body *in such a way as practically to become what it theoretically professed to be.* I proved that it had been amended not merely in a parliamentary but in a popular sense, and gave every intelligent reader reason to suspect, that the assembly rejected the amended bill, not on its special demerits, but from the compound determination of making a good grievance and of arrogating to itself the sole power of legislation. In illustration of my last remark I must invite the attention of my readers to the term "laws" in the expression "of the laws thus rejected." However ignorant Dr. Nelson may be of the English language, Mr. Chapman is too cautious a writer to speak unadvisedly of "bills" as being "laws;" and I cannot doubt that the "bills" were styled "laws" from an innate contempt of the other branches of the legislature and a burning desire of declaring them, as soon as possible, useless and dangerous.

The following passage of the pamphlet I now quote as a text for farther observations.

Of the laws thus rejected, some were deemed by the people of vital importance, and were of provisions so wise and salutary, that it would be difficult to comprehend in what respect they displeased the official party. The subject matter of a few will be sufficient to illustrate this observation:—

1. An act to regulate the office of Receiver General. (The people had already been robbed by one Receiver-General, Sir J. Caldwell, and desired security for the future.)
2. Acts, without number, for the Extension of Education.
3. An act for taking a Census of the population.

4. An act for establishing Local Courts.
5. An act for the relief of destitute Emigrants. (Afterwards obsequiously passed by order of the Colonial Office !)
6. Prisoners' Counsel Bill.
7. Acts for reprinting the Provincial Laws in force.
8. An act to incapacitate the Judges from sitting and voting in the Legislative and Executive Councils, and to secure the independence of the Judges.
9. An act for building County Court Houses and Gaols.
10. An act for vacating the Seats of Members of the Assembly accepting offices of profit, or becoming accountable for public money.
11. Numerous Dissenters' Relief Bills.
12. An act to erect a Marine Hospital.
13. Acts for Incorporating the Cities of Quebec and Montreal. (Frequently rejected ; but afterwards passed by breaking down the powers of the Corporation to those of mere street-sweepers.)
14. Acts for establishing an Agent of the Province in London.
15. A Bill for preventing the appearance of armed troops during elections, &c. &c. &c.

The above list, taken almost at random out of upwards of 160, will fully shew the obstructive character of the Council, the justice of the people's complaints, and the utter uselessness of any remedy short of abolishing the Council or permitting the people to elect it.

Secondly. The last clause of the prefatory paragraph proves the disingenuousness of Messrs. Nelson and Chapman. The honest course would be to quote the "title" of each bill; but Messrs. Nelson and Chapman, preferring convenience to honesty, give only "the subject matter" in their

own distorted language. To establish my charge of disingenuousness, I need only compare the "subject matter" with the "title" of No. 15. The "title" was, "An act for better insuring the freedom of elections, by the removal of the troops from the places in which such elections are held." The "subject matter," according to Messrs. Nelson and Chapman, is "A bill for preventing the appearance of armed troops during elections." Does the "title" bear out Messrs. Nelson and Chapman's "subject matter"? Does the former imply, with the latter, that "armed troops" were in the habit of making their "appearance" during elections to overawe refractory patriots? The discrepancy is too glaring not to be wilful.

Thirdly. A cursory review of some of the bills will convince every reader of the disingenuousness of Messrs. Nelson and Chapman. The closing paragraph of my last quotation insinuates that the enumerated bills not only were at one time rejected but have uniformly been rejected down to the present time, and that they must continue to be rejected in all time coming. The truth, however, is somewhat inconsistent with the insinuations of Messrs. Nelson and Chapman. Most of the enumerated bills have become laws; and of the remainder some have been rejected by His Majesty after they had been sanctioned by both Houses of the Provincial Legislature. No. 2 furnishes an illustration of both these remarks. During the session of 1832--33, all the Education bills, but one, were passed by the Legislative Council and

became laws. The "rejected" one was passed in the session of 1834 in its original or almost in its original form, reserved by His Excellency the Governor-in-Chief, and "rejected" by His Majesty for the reasons assigned in a recent despatch of Lord Aberdeen. No. 3 and No. 4 were also passed by the Legislative Council and became laws, long before the departure of Messrs. Nelson and Chapman on their patriotic mission. No. 5 may serve to prejudice intending emigrants against the provincial authorities in general and the Legislative Council in particular; but Messrs. Nelson and Chapman might have had the honesty to state, that the Legislative Council objected, not to "the relief of destitute emigrants," but to the proposed means of affording that relief. The Assembly proposed to TAX the "destitute emigrants" for their own "relief," thus violating at once the provisions of the constitutional act, and the laws of humanity and common sense. The "title" of the bill, as distinguished from the "subject matter," will illustrate my remarks. Mr. Dewitt, according to the journals of the Assembly, brought in "A Bill to CREATE A FUND for defraying the expense of providing medical assistance for sick emigrants, and of enabling indigent persons of that description to proceed to the place of their destination." The special clauses of the bill proposed to CREATE A FUND for the relief of sick or indigent emigrants, out of the very pockets of the sick and the indigent emigrants. But the crime of the Legislative Council, in my opinion, consisted not in amending

or rejecting that bill, but in subsequently passing it. I admit that certain members of that body disgraced themselves and rendered the Council ridiculous by their obsequious vacillation ; but, in making this admission, I must state, in defence of my former opinion as to the executive influence in the Council, that the fickle gentlemen were but few, and that the executive was exerting its influence not for its own ends, but for those of the popular faction. With a few remarks on No. 8, I shall close this part of my subject. That bill, so far from having been rejected by the Legislative Council, was rejected by His Majesty, after it had been passed by both houses of the Provincial Legislature, for very excellent reasons. Messrs. Nelson and Chapman, doubtless, wished to produce an impression, that the legislative council and the executive were unfriendly to "the independence of the judges." Now the Council, as I have already stated, passed the bill ; and His Majesty rejected it, because it provided for the payment of the salaries of the judges, not from funds under the control of the provincial legislature, but from the provincial revenues of the Crown.

From this calm review of the enumerated bills, every candid reader must admit, that the "obstructive character," which is made the pretext for demanding a second elective branch of the provincial parliament, is to be ascribed rather to the legislative council, as it has been, than to the legislative council, as it is ; and that the "obstructive

character" of the government is just as sound a pretext for demanding an elective governor or an elective king.

ANTI-BUREAUCRAT.

Montreal, 12th May, 1835.

## No. VIII.

---

### ON THE ALLEGED ABUSES OF THE LEGISLATIVE COUNCIL.

“ II.—Another grievance complained of as arising out of the composition of the Council, is the fostering of national animosities and distinctions to which their exclusive dealing gives rise. In an address to his Majesty, dated the first of April, 1833, the Legislative Council pretended to be specially appointed to protect one class and not the whole body of the people. In the wording of this address, such was the indecent language made use of, that the Secretary for the Colonies felt himself called upon to express “his regret that any word had been introduced which should have the appearance of ascribing to a class of his Majesty’s subjects, of one origin, views at variance with the allegiance which they owe to his Majesty.” One of the many modes in which this exclusive feeling shews itself, is by the influence the Council exercises in appointments to office—sons and cousins of the ruling families, without number, are recommended and received; and the petition complains that it is seldom persons of French Canadian origin find their way into office under any circumstances—and when they are appointed, it is not until they have alienated themselves from the sympathies of the people, and have allied themselves to the factious minority opposed to the wishes and interests of the country.”

The foregoing quotation from the pamphlet of the two diplomatic commentators, charges the le-

gislative council with "the fostering of national animosities and distinctions," and appeals, in support of the charge, to a certain address of that body to His Majesty, and to the partial distribution of official emoluments. The offensive address I quote at length, confident that its candid and manly tone will triumphantly refute the foul accusation of Messrs. Nelson and Chapman, as to "indecent language," and demonstrate the slender nature of the grounds of Mr. Secretary Stanley's alleged reproof. It is not, however, merely on these grounds that I quote the address. I am induced to give it, as a brief and comprehensive exposition of the real nature of the political struggles of the province.

#### ADDRESS OF THE LEGISLATIVE COUNCIL OF LOWER CANADA.

TO THE KING'S MOST EXCELLENT MAJESTY.

*Most Gracious Sovereign,*

We, your Majesty's dutiful and loyal subjects, the Legislative Council of Lower Canada, in Provincial Parliament assembled, having had under our serious consideration, the dangerous and unconstitutional proceedings adopted by the Assembly, are impelled by a sense of duty to your Majesty, and your Majesty's faithful Canadian people, humbly to approach your Majesty's throne, with a representation of the alarming posture of the affairs of this Province, and our earnest supplication for immediate and effectual relief.

From the enviable state of peace and prosperity to which we had attained under the Constitution, bestowed upon us by your Majesty's Royal Father and the Imperial Parliament, we are approaching to a state of anarchy and confusion—unceasing at-

tempts are made to destroy the confidence which has hitherto subsisted between the subjects of your Majesty, of different origin and language—the interests of agriculture and commerce, and the wants of the people are neglected, for the advancement of the cabals of party. Your Majesty's Representative is falsely charged with partiality and injustice in the exercise of the powers confided to him. Your Majesty's officers, both civil and military, are deliberately libelled, as a combined faction, actuated by interest alone, to struggle for the support of a corrupt Government, adverse to the rights and wishes of the people—and this unmerited abuse has, for years past, been as frequent within the walls of the Assembly as without—nor can it be doubted that this system has been adopted and urged, with a wicked intention, to degrade the local authorities in the eyes of the people, and thereby ultimately to render them powerless and inefficient for the support of your Majesty's Government in this Province.

Every thing indicates a continuance, if not an increase, of the evils which we have briefly enumerated—for while your Majesty's officers, and particularly the Judges of your Majesty's Courts of Law, are accused and defamed, a competent tribunal within the Colony, to which they might appeal for trial and vindication, is refused—whereby a timid, instead of a fearless and independent exercise of their functions is to be apprehended: and with a view to the completion of its designs, the Assembly has ventured on the daring step of addressing your Majesty to render the Legislative Council elective.

The crisis at which we have arrived, is pregnant with consequences of the deepest interest to the happiness and welfare of your Majesty's subjects in this province—and, at such a moment, it would be criminal in the Legislative Council to withhold from your Majesty the frank and candid avowal of its sentiments,

The efforts of the Assembly have been obviously directed for several years past to the attainment of power and influence, at the expense of the Crown, and in direct violation of the constitutional rights and privileges of the Legislative Council. In illustration of this, we respectfully advert to the persevering endeavours of that House to obtain the entire controul and disposal of all the provincial revenue and income, refusing, at the same time, to make any adequate permanent provision for the expenses of the Civil Government, and to provide for the independence of the Judiciary,—to the conditions and instructions annexed to the votes of certain sums contained in the Bill of Supply sent up during the present session, which strike at the existence of your Majesty's prerogative to appoint to all offices of honour or profit in the colony,—to the claim advanced by the Assembly to preserve this extensive and important part of your Majesty's dominions, (in which there is room for millions of inhabitants) as a colony to be settled only by Canadians of French origin and descent, contrary to the just and manifest rights of your Majesty's native-born subjects, and lastly, in the attempt to induce your Majesty to adopt a measure which would destroy the equilibrium of the Constitution, by substituting an elective Council for the intermediate branch established by law. In reference to the pretension last noticed, we humbly entreat your Majesty's attention to the undeniable fact, that in proportion as your Majesty has graciously been pleased to increase the constitutional weight and efficiency of the Legislative Council, by the addition of members, unconnected with the local administration, and largely taken from the Assembly itself, the efforts of that House for its entire abolition, have become more and more violent and daring.

That the Constitution of Government, established in this province, under the Act passed in the 31st

year of the reign of his Majesty, King George the Third, chapter 31, has been efficacious in promoting the welfare and happiness of the inhabitants thereof, and in confining their attachment to the British Throne, are facts powerfully attested by the peaceable submission of the people to the laws, and the readiness with which they have on all occasions defended the province against foreign aggression, as well as by the petitions laid at the foot of the Throne in the years 1814 and 1828, and the addresses at those periods, of the Assembly itself, in which they entreated his late Majesty and the Imperial Parliament 'to maintain the inhabitants of Canada in the full enjoyment of the Constitution as established by law, without any change whatever.'

It was in the Year 1831, after the general election for the Assembly, now in session, and when some grounds of complaint against the local administration were in course of being redressed by the interposition of the Imperial Government, that a desire for a change in the Constitution was first openly avowed in that body, and it is a matter of astonishment that a violent, and reckless party in that House should be able to induce a majority of its members into an attempt to destroy a form of Government, under which your Majesty's Canadian people have enjoyed a state of peace, security and contentment, scarcely exceeded by any part of the world and against which no considerable portion of the people have yet formally complained.

While, therefore, the Legislative Council desire not to conceal from Your Majesty, the actual state of the Province, they are far from believing that the great body of the people yet participate in the views and wishes of the majority of the Assembly, but in a community in which education has made so little progress even the well disposed, the happy and contented, are so liable to be misled by the factious and designing.

The Constitution enables your Majesty to uphold an independent branch of the Legislature by a judicious selection of the Members chosen to compose it, and we venture, with all humility, to state to your Majesty, that a branch so chosen is essential to sustain your Royal Prerogative, to maintain the connection, which happily subsists between this Colony and the mother country, and to give security to a numerous class of your Majesty's subjects of British origin, now numbering about one hundred and fifty thousand souls, scattered over this Province, whose interests cannot be adequately represented in the Assembly, seven eighths of the members whereof are of French origin, and speak the French language.

It is under the circumstances above described that the Assembly have proposed to your Majesty to abolish this House, and to substitute in its place, a Council to be elected by proprietors of estates of ten pounds annual value; a measure well conceived to further the desired object of obtaining a legislative body, in all respects, the counterpart of the Assembly, in as much as that would virtually embrace the whole constituency of the country.

Having maturely considered, we trust with no improper bias, the nature of the alterations in the Constitution, proposed by the Assembly, we entreat your Majesty duly to weigh the opinion which we now humbly submit, as to the fatal consequences which may be expected to result from such a change. Its more immediate effects would be to render all offices in the colony elective—to unsettle the minds of your Majesty's subjects of British origin respecting the security of life and property, which they now enjoy—to prevent their further increase through emigration, and to sever the ties which bind the colony to the parent state; while its ultimate result would bring into collision the people of Upper and Lower Canada, and drench the country

with blood; for it is our solemn conviction that the inhabitants of Upper Canada will never quietly permit the interposition of a French republic between them and the ocean.

When the leaders of the Assembly, in the year 1831, first openly declared themselves against the Constitution, they found means of inducing a member of this House to proceed to England, for the sole avowed purpose of supporting the petitions of the Assembly to your Majesty, and they have since, from year to year, procured the prolongation of his mission. We humbly submit that the representations made by this gentleman to your Majesty's government, ought to be received with extreme caution, because the Legislative Council have never assented to the mission—have never had official communication of any instructions given to him, or of despatches from him—and he has committed a gross breach of the constitutional rights of the house, by receiving a large annual salary from the Assembly, knowing the same to be without the sanction of the law, paid to him out of the public money, advanced upon the simple votes of that House, for defraying its ordinary expenses.

Upon all these circumstances, the Legislative Council earnestly beseech your Majesty to take into your most serious consideration the present alarming posture of affairs in your Majesty's once happy province of Lower Canada—to be graciously pleased to adopt such measures as in your wisdom will tend to tranquillize the minds, to maintain the constitutional rights and liberties of all your Majesty's subjects therein, and thus guarantee the permanence of the existing connexion between the colony and the parent state.

The several paragraphs of the address were *unanimously* agreed to by the Council.

That I may put the reader fully in possession of the circumstances, under which the address was

passed, I subjoin the names of the members who were present, and unanimously agreed to every paragraph,

The Honourable the CHIEF JUSTICE, Speaker,  
The Honble. Messrs. HALE,

“ Sir JOHN CALDWELL, Bart.  
“ RYLAND,  
“ BELL,  
“ STEWART,  
“ MOFFATT,  
“ M’GILL,  
“ MOLSON,  
“ COUILLARD,  
“ GATES,  
“ JONES,  
“ BAXTER.

Of these thirteen, seven, constituting, of course, a majority, were entirely independent of the local executive; and I may mention incidentally that, being the last names of the list in order of seniority, they strongly corroborate my previous statements as to the gradually and steadily improving character of the legislative council.

ANTI-BUREAUCRAT.

Montreal, 13th May, 1835.

No. IX.

---

ON THE ALLEGED ABUSES OF THE LEGISLATIVE  
COUNCIL.

In my last communication, I defended the legislative council against Messrs. Nelson and Chapman's charge of "fostering national animosities and distinctions." If, however, the alleged crime of the legislative council was, in the eyes of the patriots, sufficient to justify the annihilation of that body, I shall be entitled, if I can make good a similar charge against the leaders of the patriotic faction, to clamour for the political extinction of the assembly.

Every unprejudiced reader must perceive that the address of the legislative council to his Majesty was intended as a defensive measure against an attempt of the assembly to "foster national animosities and distinctions." But for the development of such an attempt, the legislative council's address would be an audacious and unprincipled fiction from beginning to end. What, in short, has been the uniform policy of the assembly for many years, but a systematic scheme for "fostering national animosities and distinctions"? I extract some passages from a French pamphlet recently published in Montreal under the sanction of the

patriotic leaders, circulated only in the country, and exclusively intended for "the most illiterate and most credulous portion of the community."

"A swarm of Britons hastened to the shores of the new British colony, to avail themselves of its advantages, to improve their own condition."

"In consequence of the facilities afforded by the administration for the settlement of Britons within OUR colony, they came in shoals to our shores to push their fortunes."

"Others of them established themselves in OUR cities; they were encouraged and supported by their fellow-countrymen, and made themselves masters of all the trade, as well foreign as domestic."

"They have established a system of paper money, based solely upon their own credit, and which our *habitans* have had the folly to receive as ready money, although it is not hard cash, current among all nations, but on the contrary, which is of no value, and, without the limits of the province, would not be received by any person."

These extracts are quite conclusive as to the "fostering of national animosities and distinctions."

The last charge, brought against the legislative council by Messrs. Nelson and Chapman, is that of a partial distribution of official emoluments. This charge might be satisfactorily met by a bare statement of the notorious facts, that the legislative council does not dispense, either directly or indirectly, any portion of the official patronage, and that it is prevented by the prescriptive usurpation of its own speaker, of whose official sins it is guiltless, from dispensing even its own patronage, in the appointment of clerks and door-keepers. I may,

also, refer my readers to my remarks on the alleged identity of the two councils, as proving that the legislative council, as a body, cannot be said to influence the executive council, and that the executive council cannot exercise any control on the governor's dispensation of official patronage.

Of all these facts Messrs. Nelson and Chapman were well aware; and, whatever corruptions may exist in the dispensing of official patronage, I am justified in charging Messrs. Nelson and Chapman with disingenuousness for imputing such corruptions to the legislative council.

Though the subject of official patronage would more naturally be classed among the alleged abuses of the executive, yet I may here prosecute the discussion of the grievance, in compliance with the disingenuous classification of Messrs. Nelson and Chapman.

The grievance can rest only on the alleged fact, that Britons hold a majority of provincial offices. The truth or falsehood of this alleged fact is to me perfectly indifferent, on any other than political grounds. The grovelling lamentations of disappointed avarice or ambition meet not my sympathies. Discarding, therefore, the distinction between paid and unpaid offices, I maintain that the Canadians hold a majority of public appointments, political, military and judicial. In almost all the seigniorial parishes, they possess a preponderance, fearfully subversive of British interests—a preponderance, which is based on provincial laws, extorted

by importunate threats from a timid executive and subservient majorities of the Legislative Council. By substituting a qualification of real property, which Canadians generally hold, for the more rational one of educated intelligence, which more generally falls to the lot of Britons, our antagonists have covered the province with Canadian Justices of the Peace and Canadian Officers of Militia—entrusting public affairs to the management of incompetent persons, and degrading many of the most intelligent and most respectable Britons, for want of a certain quantity of land or houses. Were the alleged fact correct, it would prove neither the partiality of the present government, nor the injustice of former governments. The present government cannot discard a faithful Briton merely to make room for an untried Canadian; and, in the dispensation of its own patronage, it has been peculiarly indulgent to men of French origin. Any government, however, that knows its duty, will withhold executive power from a party, that wields its legislative preponderance for the oppression of Britons and the overthrow of British supremacy. Such a precaution on the part of the executive is the more necessary, as the obvious aim of the revolutionary party is not to obtain a fair proportion of offices for individual compatriots, but to bring, within the grasp of the whole party, the whole of the executive departments of the colony. While the patriots clamour for a more equitable distribution of offices, they denounce, as a traitor, every Canadian, who accepts an office of honour or emolument. Their complaints about the

numerical superiority of British judges rest on particularly weak grounds, whether of a professional or of a political kind. Canadian lawyers, ignorant of British habits and feelings, and generally limited in their practice to the French law, are utterly incompetent to dispense the criminal laws of England; and were juries, which from the qualification of real property were almost exclusively Canadian, to be backed by a majority of Canadian judges, one would speedily find the law, as a handmaid of sedition, systematically prostituted to political ends. Public appointments I personally wish to see in the hands of able and independent men of either race; and I must own, that family interest has more than once overlooked a plentiful lack of ability and an utter want of independence.

The hostile feeling, which our antagonists entertain towards British functionaries, is directed rather against their persons than their offices; for what can be more absurd than to suppose, that a faction, which already grasps all offices by anticipation, is really and permanently interested in the correction of official abuses? The Romans found by experience, that the plebeian tribunes, considering the tribuneship as a step to the higher dignities of the republic, deemed it more convenient to amuse the populace with empty declamation than to propose any practical and efficient remedies of official usurpations. Under the elective system, every ambitious man, holding as it were in reversion all the emoluments and all the honors of the state, is personally interested in the accumulation

of useless offices and in the maintenance of corrupt practices. In Lower Canada, neither the public opinion of the constituents, nor the moral principles of the leaders, would present any barrier to the universal triumph of the general temptation. But facts speak volumes. The most flagrant of the provincial abuses, the extravagant salaries of the Speakers of the two houses, sprang from a disgraceful compromise between the leaders of the respective factions, the democratic and the official.

Here I close my somewhat protracted remarks on the legislative council.

ANTI-BUREAUCRAT.

13th May, 1835.

No. X.

---

ON THE ALLEGED ABUSES OF THE JUDICIARY.

The first of the alleged abuses of the Judiciary is that "the Judges are appointed to hold office, not during good behaviour, but *during the pleasure of the Crown*, which practically means *during the pleasure of the official party to which they belong.*"

In answer to this complaint, I may merely remind the reader, that, in my seventh article, I proved that the alleged abuse owes its continued existence to the encroaching ambition of the Assembly. A bill, by which the judges were to hold office "during good behaviour" was passed by the Legislative Council, and very properly rejected by His Majesty, because it assumed that the territorial revenue and all the other crown revenues belonged to the provincial legislature. Not only were the legislative council and His Majesty innocent of the charge, but the assembly itself was guilty of it. That illustrious body well knew, that its usurpation of the crown revenues must prevent the bill from receiving His Majesty's sanction and doom the judges to continue to hold office "during pleasure." The financial provisions of the bill were most ludicrously inconsistent with its professed object. Under the pretext of securing the independence of the

judiciary, the assembly aimed at subverting the independence of the executive by usurping the control of every shilling of the public revenue. Whatever opinion any reader may entertain as to the assembly's claim of the entire revenue, he cannot but reprobate its disingenuous and tortuous mode of enforcing its claim.

The second of the alleged abuses is, that "The Judges are selected out of the official class or their partisans, and not from among those members of the bar, in whom the people have confidence." The Judges, I may venture to assert, have been generally selected from among the most respectable members of the legal profession without reference to national origin; and Canadians have been appointed in a fair proportion to the number of Canadian lawyers of competent qualifications. If I exclude the inferior districts of Gaspé and St. Francis, which are almost exclusively occupied by an English population, I find that out of nine judges of the three districts of Quebec, Three Rivers and Montreal, three are of Canadian origin, "selected from among those members of the bar, in whom the people have confidence." One third of the whole is as high a proportion, as the moral and intellectual standing of Canadian lawyers can justly demand.

It should, moreover, be considered, that Canadian lawyers, whose practice, as I have already hinted, is generally confined to the civil law of the province, are not by any means fitted to dispense the English criminal law, and that, if they were fitted

to do so, the safety of the English population, under the working of the Jury Law recently expired, demanded the neutralising of Canadian jurors by English Judges. In using this language, I do not impute partiality either to jurors or to judges. I argue, that, on Messrs. Nelson and Chapman's suspicions of national partiality, the English inhabitants are not less entitled than the Canadians to the assumed partiality of compatriots.

If, however, I admit that the alleged grievance has a real existence, I am prepared to shew, that the grievance is not peculiar to Lower Canada. I am happy in being able to quote the authority of Lord Brougham, the chosen champion and deluded dupe of Messrs. Nelson and Chapman. That liberal lord, when he was Henry Brougham, made the following observations in his celebrated speech "On the present state of the law."

But there is a custom above the law—a custom, in my mind, "more honoured in the breach than the observance,"—that party, as well as merit, must be studied in these appointments. One half of the Bar is thus excluded from the competition; for no man can be a Judge who is not of a particular party. Unless he be the known adherent of a certain system of government,—unless he profess himself devoted to one scheme of policy,—unless his party happen to be the party connected with the Crown, or allied with the Ministry of the day, there is no chance for him; that man is surely excluded. Men must be on one side of the great political question to become judges; and no one may hope to fill that dignified office, unless he belongs to the side on which courtly favour shines; his seat on the bench must depend, generally speaking, on his supporting

the leading principles of the existing administration.

But perhaps, Sir, I may be carrying this distinction too far, and it may be said, that the Ministers do not expect the opinions of a Judge should exactly coincide with theirs in political matters. Be it so; I stop not to cavil about trifles; but, at all events, it must be admitted that, if a man belongs to a party opposed to the views of Government; if, which the best and ablest of men, and the fittest for the bench, may well be, he is known for opinions hostile to the Ministry, He can expect no promotion—rather let me say, the Country has no chance of his elevation to the bench, whatever be his talents, or how conspicuously soever he may shine in all the most important departments of his profession. No one, I think, will venture to deny this; or, if he do, I defy him to show me any instance in the course of the last hundred years, of a man, in party fetters, and opposed to the principles of Government, being raised to the bench. No such thing has taken place that I know of. Never have I heard of such a thing, at least in England; though we have, perhaps, known instances of men who have changed their party, to arrive at the heights of their profession. But on this subject, desirous through-out of avoiding all offence, I will not press—well—I do not wish to say a word about it.

In Scotland, it is true, a more liberal policy has been adopted, and the Right Hon. Gentleman opposite has done himself great honour by recommending Mr. Gillies, Mr. Cranstoun, (now Lords Gillies and Corehouse,) and Mr. Clerk, (Lord Eldon,) all as well known for party-men there as Lord Eldon is here; though, unfortunately, their party has been what is now once more termed the wrong side; but all men of the very highest eminence among the professors of the law. Now, when I quote these instances in Scotland, I want to see examples of the same sort in England; for, however great my respect for the law and the people of the

North may be, I cannot help thinking, that we of the South too, and our jurisprudence, are of some little importance, and that the administration of justice here may fairly call for some portion of attention. But, Sir, what is our system? If, at the present moment, the whole of Westminster Hall were to be called upon, in the event of any vacancy unfortunately occurring among the Chief Justices, to name the man best suited to fill it, to point out the individual whose talents and integrity best deserved the situation—whose judicial exertions were the most likely to shed blessings on his country—can any one doubt for a moment whose name would be echoed on every side? No; there could be no question as to the individual to whom would point the common consent of those most competent to judge; but then, he is known as a party man, and all his merits, were they even greater than they are, would be in vain extolled by his profession, and in vain desiderated by his country. I reprobate this mischievous system, by which the empire loses the services of some of the ablest, the most learned, and most honest men, within its bounds.

But here let me not be supposed to blame one party more than another; I speak of the practice of all governments in this country; and, I believe, when the Whigs were in office, in 1806, they did not promote to the bench any of their political opponents; they had no vacancies in Westminster Hall to fill up, but in the Welsh judicature they pursued the accustomed course.

In pursuing the second alleged abuse of the Judiciary, Messrs. Nelson and Chapman object to Mr. Gale's recent elevation to the bench, as "a man, who was a violent and decided partisan of the administration of the Earl of Dalhousie, and the declared enemy of the laws he is sworn to administer."

The two charges against Mr. Gale are both connected with his mission to England in 1828. Mr. Gale was at once political agent of the local government and legal agent of the eastern townships.

If Mr. Gale was to be excluded from the bench on account of violent and decided partisanship, which, however, is gratuitously ascribed to him, every other lawyer, who is guilty of a similar charge, ought to be doomed to a similar exclusion. How would such a rule affect the province? It would inevitably disqualify the leading lawyers of either party, and would fill the bench with men either of inferior talents or of supple meanness of spirit. But, if I admit the charge of violent and decided partisanship in its fullest force, Mr. Gale has, during the last seven years, atoned for his alleged offence by abstaining entirely from political strife, and absenting himself from political meetings. The absurd charge, in truth, was never urged but as a convenient grievance; and every respectable Canadian was as much surprised as every respectable Englishman was ashamed, to find, that Mr. Spring Rice had entertained serious intentions of dismissing Mr. Gale without inquiry and without a hearing.

It was in Mr. Gale's capacity, as legal agent of the eastern townships, that he was "the declared enemy of the laws he was sworn to administer." Desirous as he was of procuring the introduction of registers of real property into the English portions of the province, Mr. Gale could not fail to attack and expose the insecurity of the Canadian law of

real property ; and all his hostile remarks are to be interpreted in reference to his special object. If those only, who consider the laws of a country perfect, are to be permitted to dispense them, where shall a judge be found either in Lower Canada or in England? Did any one assign Mr. Brougham's speech of six hours against the laws of England, as a stumbling-block in his ascent to the wool-sack? Neither Mr. Dennis Benjamin Viger nor his familiar friend, Mr. Spring Rice, was ever guilty of such an absurdity. But the assembly itself, the very faction that urges the charge of enmity against Mr. Gale, has, by introducing registers of real property into the townships, acknowledged the imperfection of the Canadian law, and the justice of Mr. Gale's hostile strictures.

As the subject grows under my pen, and threatens to be almost interminable, I shall pass over the remaining "abuses of the judiciary," and all the "abuses of the executive," and come to the "abuses of the interference of the imperial parliament." I take this long leap, because the intermediate matters affect not the constitution of the government, but merely the political position of an individual ; and as all the complaints were pronounced by a liberal committee of a liberal parliament absolutely groundless, I need not waste my time, when no constitutional principle is involved, in doing that which has been done already. I do not, by any means, deny that abuses exist in the executive government of Lower Canada ; but I feel that most of them sprang from a system now entirely explo-

ded, and that some abuses exist in every government. So far as practical affairs are concerned, one should rather consider what the future is likely to be, than what the past has been ; and my quotations from the letters of " A Citizen," who was himself a steady assailant of official abuses, prove that the blighting influence of the official faction has passed away for ever.

ANTI-BUREAUCRAT.

Montreal, 18th May, 1895.

ON THE "ABUSES OF THE INTERFERENCE OF THE IMPERIAL PARLIAMENT."

The learned and loyal commentators on the "humble petition" of the convention demand "The recognition of the principle of non-intervention, to prevent future misunderstandings." The context seems to apply this non-interference only to the internal affairs of the province; but I shall be able to shew, that the spirit, from which the demand proceeds, is hostile to any and every species of imperial control.

In support of their doctrine, the commentators appeal to history. "The people of Canada do not hesitate to ask from a prince of the House of Brunswick, and a Reformed Parliament, all the freedom and political powers, which the princes of the House of Stuart and their Parliaments granted to the most favoured of the Plantations, formed in a period when such grants must have been less favourably regarded than they would now be."

One cannot but admire the extreme liberality of those, who identify the reigns of the Stuarts with the golden age of political liberty; and I will not disturb the happy current of a political commentator's thoughts by unreasonably demanding the

grounds of his very liberal opinion. I shall content myself with adding, that there cannot be any sound analogy between the English colonies of the seventeenth century and those of the nineteenth.

The following passage, which I copy from an editorial article of the Herald of 20th January last, may throw some light on the truth.

“ An historical sketch of the nature of colonial subordination may not be out of place—a sketch, of which we draw most of the materials from the ‘ Colonial Representation ’ of our friend Mr. Chisholm of Three Rivers. ‘ The constitution of the government of England,’ says Pownall, ‘ as it stood at that time, founded upon, built up with the feudal system, could not extend beyond the realm. There was nothing in the nature of the constitution providing for such things as colonies or provinces. Lands without—beyond the limits of the realm, could not be the property of the realm, unless by being united to the realm. But the people, who settled upon these lands *in partibus exteris*, being the King’s liege subjects, the King, as sovereign lord, assumed the right of property and of government!—Originally, therefore, the colonies stood in the same relation to the English parliament, as did Normandy and other French provinces in days of yore, or as Hanover does at the present day, or as Ireland will (?) after the repeal of the legislative union.

The colonies were subject to the King, and to the King only; between them and the mother country, the sovereign was the only political bond of union.

Where parliaments are feeble and Kings almost despotic, such a political union, loose as it appears, might sufficiently consolidate an empire ; but where parliaments are strong, and sovereigns only nominally powerful, such a political union would be the fertile source of civil discord, or, perhaps, of civil war. It was the latter relation of sovereigns and parliaments, that rendered the legislative unions of England and Scotland, and of Great Britain and Ireland, indispensably necessary.

The original form of colonial subordination continued, as long as the continuance was possible, down to the overthrow of regal power in the person of Charles I.

After that period, the parliament necessarily became the sovereign of the colonies ; and as most of the continental colonies had been peopled by discontented and disaffected men, the change was, perhaps, not very painful to the feelings of the colonists.

Under the military despotism, which trampled parliament itself under foot, the sovereignty of the colonies was in a great measure vested in the council of state.

On the restoration of the royal family, the connexion between the colonies and the mother country was placed pretty nearly on its present footing."

I now proceed to inquire, what is meant by " present footing" in this passage of the Herald.

I cannot quote better authority, than that of Mr. Burke. That great statesman's testimony is

the more valuable, inasmuch as his very arguments, while opposed to the taxation of America, admit the general principle of imperial interference. I cannot deny myself the pleasure of specially quoting one singularly apposite sentiment. Imperial control "is necessary to coerce the negligent, to restrain the violent, and to aid the weak and deficient, by the overruling plenitude of her power."—

#### AMERICAN TAXATION.

Again, and again, revert to your old principles. Seek peace and ensue it—leave America, if she has taxable matter in her, to tax herself. I am not here going into the distinctions of rights, nor attempting to mark their boundaries. I do not enter into these metaphysical distinctions—I hate the very sound of them. Leave the Americans as they anciently stood, and these distinctions, born of our unhappy contest, will die along with it. They and we and their and our ancestors, have been happy under that system. Let the memory of all actions, in contradiction to that good old mode, on both sides, be extinguished for ever. Be content to bind America by laws of trade; you have always done it. Let this be your reason for binding their trade. Do not burthen them by taxes; you were not used to do so from the beginning. Let this be your reason for not taxing. These are the arguments of states and kingdoms—leave the rest to the schools; for there only they may be discussed with safety. But if intemperately, unwisely, fatally, you sophisticate and poison the very source of government, by urging subtle deductions, and consequences odious to those you govern, from the unlimited and illimitable nature of supreme sovereignty, you will teach them, by these means, to

call that sovereignty itself in question. When you drive him hard, the boar will surely turn upon the hunters, &c.

Before I sit down I must say something to another point with which gentlemen urge us. What is to become of the declaratory act, asserting the entireness of British legislative authority, if we abandon the practice of taxation?

For my part, I look upon the rights stated in that act exactly in the manner in which I viewed them on its very first proposition, and which I have often taken the liberty, with great humility, to lay before you. I look, I say, on the imperial rights of Great Britain, and the privileges which the colonists ought to enjoy under these rights, to be just the most reconcileable things in the world. The Parliament of Great Britain sits at the head of her extensive empire in two capacities; one as the local legislature of this island, providing for all things at home, immediately, and by no other instrument than the executive power. The other, and I think her nobler capacity, is what I call her *imperial character*; in which, as from the throne of Heaven, she superintends all the several inferior legislatures, and guides and controuls them all without annihilating any. As all these provincial legislatures are only co-ordinate to each other, they ought all to be subordinate to her; else they can neither preserve mutual peace nor hope for mutual justice, nor effectually afford mutual assistance. It is necessary to coerce the negligent, to restrain the violent, and to aid the weak and deficient, by the over-ruling plenitude of her power. But in order to enable parliament to answer all these ends of provident and beneficent superintendence, her powers must be boundless. The gentlemen who think the powers of parliament limited, may please themselves to talk of requisitions. But suppose the requisitions are not obeyed? What! shall there be no reserved power in the empire to supply

a deficiency which may weaken, divide and dissipate the whole ?

This is what I meant when I have said, at various times, that I consider the power of taxing in parliament as an instrument of empire, and not as a means of supply.

Such, Sir, is my idea of the condition of the British empire, as distinguished from the Constitution of Britain ; and on these grounds I think subordination and liberty may be sufficiently reconciled through the whole ; whether to serve a refining speculatist or a factious demagogue, I know not ; but enough surely for the ease and happiness of man.

In this passage, Mr. Burke asserts the Imperial Parliament's right of interference, even with the internal affairs of the colonies ; and, after quoting a few other jurists, I shall close this article with several unresisted instances of such interference.

“The British American plantations are principally conquered or ceded countries ; having been obtained in the last century either by right of conquest, or driving out the natives (with what natural justice I shall not at present inquire) or by treaties. They are subject to the control of Parliament, though not bound by any acts of Parliament unless particularly named.” Such was the opinion of Judge Blackstone.

Not only the Parliament, but even the Court of King's Bench, extends its influence over the colonies. Lord Mansfield held, “that the Court of King's Bench in England can send a writ of *habeas corpus* to the plantations.”

“The respective acts of Assembly, for establish-

ing courts of King's Bench and Common Pleas, in the islands of St. Christopher and Nevis, expressly reserve the jurisdiction of the court of King's Bench in England."

I now come to acts of parliament.

When some of the American plantations, after the death of Charles I., had declared for Charles II., the Long Parliament unceremoniously enacted, "That in Virginia, and the islands of Barbadoes, Antigua, St. Christopher's, Nevis, Montserrat, Bermudas, and divers other islands and places in America, there have been and are colonies and plantations, which were planted at the cost, and settled by this people, and by the authority of this nation, which are and ought to be subordinate to, and dependent upon, England; and have, ever since the planting thereof, been, and ought to be, subject to such laws, orders and regulations as are or shall be made by the Parliament of England."

The statute 6, Geo. III., c. 12, provides, "That all his Majesty's colonies and plantations in America have been, and are, and of right ought to be, dependent upon the Imperial Crown and Parliament of Great Britain; who have full power and authority to make laws and statutes of sufficient validity to bind the colonies and people of America, subjects of the crown of Great Britain, in all cases whatsoever." In the following session, the statute 7, Geo. III., c. 59, suspended the legislature of New York. We might add innumerable other acts of a similar kind.

As this communication is already somewhat long, I shall close it by remarking, that every colony of any consolidated empire must actually, in external affairs, and potentially in internal, be subject to one and the same general legislature.

ANTI-BUREAUCRAT.

21st May, 1835.

## No. XII.

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### ON THE "ABUSES OF THE INTERFERENCE OF THE IMPERIAL PARLIAMENT.

I now come to consider the alleged abuses in detail.

The first is, that "The act of last session of the Imperial Legislature, granting a charter to a company of speculators styled the British American Land Company, is objected to, as a violation of the articles of capitulation and of the declaratory act of 1778, and as a measure in itself repugnant to the institutions of the country, and odious to the people thereof." Again, "Thus in two ways is the act of 18 Geo. III. violated: first, by taxation against the statute, and, second, by placing the proceeds of the tax out of the reach of the local legislature."

Before I attempt to discuss the real merits of these quotations, I may do well to point out the disingenuousness of the commentator. As Dr. Nelson is notoriously unable to write English, I have a right to consider Mr. Henry S. Chapman as really the sole author of the pamphlet; and I quote the following proof of that gentleman's consistency and honesty from the editorial columns of his own journal, the Daily Advertiser of Montreal. In August, 1833, Mr. Henry S. Chapman thus expressed himself:—"We have not forgotten the transmission of profits out of the country, but we

do not consider it an evil, at least not more so than being obliged to pay for your quartern loaf is an evil. It must be borne in mind, that for every profit remitted, there is a capital brought into the country. Capital is especially wanted in Canada, and the profit is the inducement—the bait held out, without which the required capital will not be forthcoming. The remitted profits are generated by the price paid for the lands; that price will be regulated by competition; for, however much the Land Company may be called a monopoly, it is a clear case of misnomer so long as other sellers of land are to be found at hand. The company can only receive a high price for their lands by expending labour (money's worth) upon them; and if individuals can be found to pay to the company more than to the other land-owners, it is because the company has increased the value of its land by the said expenditure. If, therefore, the profits remitted be considered an evil, it is an evil borne for the sake of a great good; but is only an evil in so far as the burthens imposed on society for the sake of mutual protection are evils. As long as the introduction of capital into the country be considered useful—as long as the labours of the company in opening roads, &c. be considered useful—we will not cavil about the remission of a profit. If the company fails to fulfil its trust, then will be the time to cry out. We should think the desire to conciliate customers will be its ruling passion, which cannot be done by exorbitant demands. The company would effectually cut its

own throat by such a course. One evil we do see in the present Land Companies—the power of selling land on credit.”

How can Mr. Henry S. Chapman reconcile this article with the doctrine of the pamphlet, that the charter of the Land Company amounts to TAXATION; and how can any reader reconcile Mr. Henry S. Chapman's inconsistency even with ordinary honesty of purpose? By establishing a charge of disingenuousness, I almost supersede the necessity of specifically answering the disingenuous commentator's arguments.

These arguments, moreover, are so false and so absurd, that they hardly admit a close and pointed reply.

“The articles of capitulation” secured to the Canadians the free and undisturbed enjoyment of their private property; but no one but a knave or a dupe can suppose that these “articles” secured to the Canadians the exclusive possession of the unconceded lands. Liberal as England has always been, she never was so liberal as to make the alleged concession to a conquered people.

In “The Declaratory Act of 1778,” to which the commentators appeal, “The King and Parliament of Great Britain declare, that from thenceforth they will not impose any duty, tax, &c., payable in any of the King's Colonies, Provinces, and Plantations in North America or the West Indies, except for the regulation of commerce; the produce whereof is always to be applied to the use of the Colony in which it is levied.”

I will not insult my reader by attempting to convince him that the money paid to government by the land company, is not a tax on the province of Lower Canada, and that "The Declaratory Act of 1778" is not violated "by placing the proceeds of the tax out of the reach of the local legislature."

The commentators, however, attempt to make out a case of negative "taxation." "Throughout North America the public lands afford a ready means of raising wherewith to supply the exigencies of the government, without inflicting any, the slightest burthen upon the people." "By this species of indirect taxation, direct taxation, and also indirect taxation of a more obvious kind, are avoided. The obnoxious act robs the people of Canada of this resource, and compels them to find other modes of supplying the public exigencies."

These passages teem with misrepresentation and falsehood. They do not, I may say, contain one syllable of truth. I shall enter fully on the subject, chiefly with the view of making out one charge more of disingenuousness against the patriotic commentators.

My quotations are manifestly intended to produce an impression, that, in the United States, the proceeds of the public lands supersede the necessity of "direct taxation and also indirect taxation" and that, in Lower Canada, the misapplication of the proceeds of the public lands, compels the provincial legislature to burden the province with "direct taxation, and also indirect taxation."

On 30th September, 1831, the public lands thus stood in the ledger of the United States. They had cost 48,077,551 dollars 40 cents, and had yielded 37,273,713 dollars 31 cents, leaving a CLEAR LOSS of 10,803,838 dollars 9 cents. I now come to consider the proceeds of the public lands, not of the whole union, but of the separate states, as I find them stated in the American almanac for 1833.

<i>State</i>	<i>Proceeds of Lands.</i>		<i>Total Revenue.</i>	
	Dols	Cents	Dols	Cents
Maine,	2,452	16	256,401	78
Massachusetts,	17,980	81	1,032,082	71
New York,	72,047	80	1,740,531	16
Pennsylvania,	103,329	18	3,033,978	57
	<hr/>		<hr/>	
	195,809	95	6,062,994	22

The result, therefore, is, that, in these four states, the revenues of the public lands were only  $3\frac{1}{4}$  per cent. on the gross revenues—the remaining  $96\frac{3}{4}$  per cent. being, of course, made up by “direct taxation and also indirect taxation.” To give my reader an idea of the oppressive nature of the “direct taxation” in many of the states, I subjoin the objects of direct taxation in Virginia, as being the oldest and perhaps the wealthiest state—lots; land; slaves; horses; stallions; coaches; stagecoaches; carryalls; gigs; licenses to merchants, brokers, jewelers, auctioneers, pedlars, ordinary-keepers, keepers of houses of private entertainment, venders of lottery tickets, and exhibitors of shows. Had I looked for an extreme case, I might have selected

Ohio, in which commercial capital and money lent are liable to taxation.

Having thus proved the absolute falsehood of Mr. Henry S. Chapman's assertions and insinuations, in regard to the financial results of the public lands, whether of the whole union or of separate states, I now proceed to shew, that the alleged misappropriation of the public lands in Lower Canada does not compel the provincial legislature to burden the province with taxes.

Almost the whole of the provincial revenue consists of the import-duties ; and I may safely assert that nine-tenths of the Canadian population have not had any personal knowledge of a pecuniary tax. The taxation of Lower Canada, whether it is compared with that of the whole union or of separate states, is a trifle.

The import-duties, which, as I have already mentioned, defray almost the whole of the provincial expenditure, are much lighter than those of the union, which are all absorbed by the general government. Against the heavy taxes, therefore, of the separate states, Lower Canada, in fact, has not to place a single pecuniary burden. This discussion on public lands and taxation, though it may not bear closely on the main subject, has at least served the important end of exposing the dishonesty and the ignorance of Messrs. Nelson and Chapman, commentators on the humble petition of the convention.

Having thus disposed of the special objections to the British American Land Company, I now come

to consider some objections of a general character. The Company is "repugnant to the institutions of the country, and odious to the people thereof."

The British American Land Company certainly is "repugnant to the institutions of the country," inasmuch as an influx of English settlers, whether they come from Britain or from the United States, most assuredly tends to undermine certain oppressive and impolitic "institutions of the country." Will Englishmen, for instance, endure for one hour longer than they can help themselves, the dead weight of the feudal tenure and of its accompanying brood of public evils, the depreciation, the insecurity and the vassalage of real property? Against such a tenure, the feelings of an Englishman are strong and deep; and the Canadians are conscious that when he is able to carry those feelings into effect, he will find nothing in the legislative proceedings of the dominant faction, entitling the Canadians to peculiar forbearance. The attachment of the Canadians to the "institutions of the country" is based as well on a sense of interest as on hereditary prejudices. The more intelligent among them feel, that, as soon as the abolition of the feudal tenure and the establishment of registers shall have made real property an object of safe and profitable speculation, the commercial spirit of the hated English, which has already engrossed the greater part of the personal wealth, will soon acquire equal superiority in regard to the lands and houses of the province. God forbid that any means, but those of honesty and justice, should be employed in ef-

fecting the inevitable transfer ; and, if neither honesty nor justice be violated, I need hardly say, that such a transfer would be as honourable to English enterprize as it would be dishonourable to Canadian "indolence."

ANTI-BUREAUCRAT

May 22, 1835.

ON THE "ABUSES OF THE INTERFERENCE OF THE  
IMPERIAL PARLIAMENT."

I now come to consider "The Canada Tenures Act;" for which I undertake to establish, both morally and legally, a triumphant justification.

"This nefarious act," say the commentators, "for such it must be called, disturbed rights which had been in existence upwards of forty years—minors' rights, the rights of dowered women, sheriff's titles, *hypotheques* executed upon land, all these have been swept away by the act of the 6th of the late king."

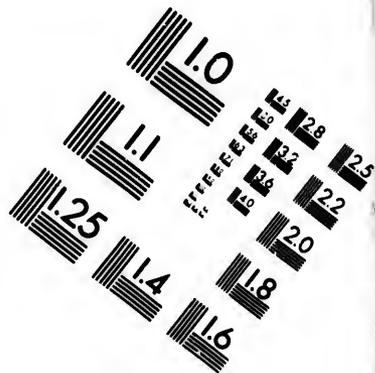
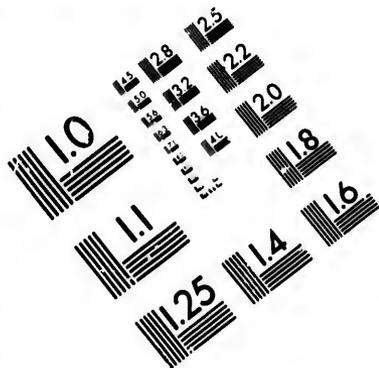
This passage establishes one proof more of the disingenuousness, or rather dishonesty, of the patriotic commentators. The latter part of the passage is obviously intended to convince the British public, that "The Canada Tenures Act" arbitrarily extinguished "minors' rights," &c.. at one fell swoop. Before quoting the clause, on which this romance is founded, I may state in my own language the general object of the enactment. The commutation of tenure was to be accompanied, not by the extinction, but by the registration or satisfaction of "minors' rights, &c.," and was to extinguish only those claims that were not "made or

signified" after due notice given during a certain period in the Official Gazette, and in two other papers respectively published in Quebec and Montreal.

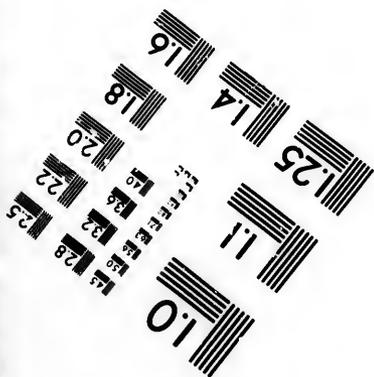
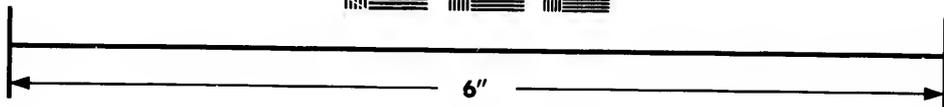
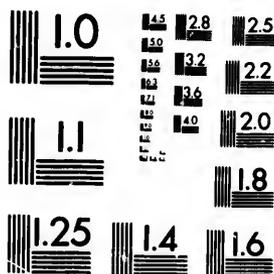
*Persons applying for such commutation, to give public Notice to Mortgagees and others having Claims on such Lands.*

VII. Provided nevertheless, and be it further enacted, That in all cases where such application for a Commutation, Release and Extinguishment of Feudal or Seignorial rights, dues or burthens shall be made in respect of Lands held either immediately of the Crown, or as an *Arrière Fief* as aforesaid, public Notice thereof shall be given by the Person so applying, for the space of three Calendar Months, in the *Quebec Gazette*, published by Authority, and in two other Newspapers published respectively, in the Cities of *Quebec* and *Montreal*, thereby calling on all Persons who may have or claim to have any present or contingent Right, Interest, Security, Charge or Incumbrance, either by Mortgage (*Hypothèque*) general or special, express or implied, or under any other Title, or by any other means whatsoever, in or upon the Lands in respect of which such Commutation, Release and Extinguishment of Feudal and Seignorial Rights, dues or burthens, shall be so applied for, to signify in Writing within three Calendar Months from the Date of such Notification, their assent to or dissent from the surrender, re-grant and change of Tenure of such Lands, and the Commutation, Release and Extinguishment of the Feudal and Seignorial Dues, Rights and Burthens so applied for; which Consent or Dissent in Writing shall, in case of an Application made by Petition to His Majesty, as hereinbefore mentioned, be lodged within the said last-mentioned period of Three Calendar Months (and Access shall be by all Persons





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freely had thereto) in the Office of the Executive Council of the said Province; and in the case where such Commutation, Release and Extinguishment of Feudal and Seignorial Dues, Rights and Burthens shall be required of a Seignior, for and in respect of Lands holden under him, *à Titre de Fief, Arrière Fief*, such Consent or Dissent in Writing shall be lodged within the said time (and access shall be by all Persons freely had thereto) in the Office of the Prothonotary or Clerk of the Superior Court of Original Jurisdiction holding Civil Pleas in the District where such Lands shall be situate; and provided further, That no such surrender, regrant, change of Tenure or Commutation, Release and Extinguishment of Feudal and Seignorial dues, rights and burthens, shall be Good, Valid or Effectual to any purpose whatsoever, unless such Notification shall have been previously made, and the Consent of all such Persons having, holding or claiming any Right or Interest, Security, Charge or Incumbrance in or upon the said Lands, shall have been signified and deposited as aforesaid; or until the Person applying for such Commutation, Release or Extinguishment of Feudal or Seigniorial dues, rights or burthens, shall show to the satisfaction of His Majesty's Executive Council, or of his immediate Superior, Lord or Seignior, as the case may be, that no such claim hath been made or signified, or that having been made, it hath been satisfied or discharged, or been declared by a Judgment of a competent Court of Law to be unfounded.

In addition to the direct falsehood, which I have brought home to the patriotic commentators, I may add a damning evidence of disingenuousness, which, as I have already mentioned, is at once a proof of a bad disposition, and a confession of a bad cause.

A provincial act, passed in 1829, "swept away," in case of sale, most of the claims, which the "nefarious act" "swept away," in case of commutation of tenure. That provincial statute is entitled "An act to provide for the more effectual extinction of secret incumbrances, on Lands, than was heretofore in use in this province;" and it differs from the "nefarious act," and that, we admit, very properly, in reserving the rights of those, who are not likely to be cognizant of official advertisements—of women, during (the) marriage, upon the immoveables of their husbands. or of infants, upon the immoveables of their fathers.

*Persons claiming any Privilege or Hypothec upon immoveables of which sentence may be applied for, to file their oppositions.*

VII. And be it further enacted by the authority aforesaid, that all persons, bodies politic or corporate, ecclesiastical or civil, women subject to marital authority, minors, persons interdicted or absentees, who may have, or claim to have any privilege or hypothec under any title, or by any means whatsoever, even for Dower not yet open (*Douaire non encore ouvert,*) in or upon the immoveables, in respect of which such sentence or judgment of confirmation shall be so applied for, shall be held and bound to file their oppositions, containing the usual election of domicile, with the Prothonotary of the Court in which such proceedings are had, within the period above limited, in order to preserve their privileges or hypothecs, in default of which such privileges or hypothecs shall be discharged and extinguished.

*Saving of the rights of women during marriage, upon the immoveables of their Husbands, of children, upon the immoveables of their fathers.*

VIII. Provided also, and be it further enacted

by the authority aforesaid, that nothing herein-before contained, shall extend or be construed to extend to take away, diminish, alter or any way affect the rights or hypothecs of women during marriage, upon the immoveables of their husbands, or of children upon the immoveables of their fathers in relation to dower not yet open, nor in any manner or way to affect substitutions.

The reader, by comparing these sections of the provincial act with the section of the imperial statute, must perceive that, to a certain extent, the former is not less "nefarious" than the latter.

I shall now proceed to prove, that "The Canada Tenures Act," as it stands, could not have been constitutionally passed by the provincial legislature, and that the merits of the imperial interference, therefore, rest entirely on the merits of the proposed commutation. If the proposed commutation was wrong, the imperial parliament was wrong; if the proposed commutation was right, the imperial parliament was right. The question, in short, becomes not a special but a general one, not merely a legal but partly a moral one.

As I shall treat this subject at greater length, when I come to discuss the claims of the constitutionalists as embodied in their petition, I shall, at present, merely remark, that, whatever opinions may be entertained as to the propriety or the impropriety of a compulsory commutation, there can be but one opinion as to the harmlessness, or rather as to the benefits, of a voluntary one. Now the "nefarious act" provides only for a voluntary commutation, whether of the seigneur in re-

lation to the sovereign, or of the vassal in relation to the seigneur.

Having thus established the propriety of the proposed commutation of tenure, I now proceed to prove, that such commutation could not have been rendered safe, but by the imperial parliament.

The commutation must be effected by a surrender to his Majesty, and a fresh grant. Now, the constitutional act of 1791 provides, in the 36th section, "That whenever any grant of lands within either of the said provinces shall hereafter be made, by or under the authority of his Majesty, his heirs or successors, there shall at the same time be made, in respect of the same, a proportionable allotment and appropriation of lands, for the above mentioned purpose, (the support and maintenance of a Protestant clergy) within the township or parish to which such lands so to be granted shall appertain or be annexed, or as nearly adjacent thereto as circumstances will admit: and that no such grant shall be valid or efficient, unless the same shall contain specifications of the lands so allotted and appropriated, in respect to the lands to be thereby granted; and that such lands so allotted and appropriated, shall be, as nearly as the circumstances and nature of the case will admit, of the like quality as the lands in respect of which the same are so allotted and appropriated, and shall be, as nearly as the same can be estimated at the time of making such grant, equal in value to the seventh part of the lands so granted."

I do not presume to decide whether the fore-

going clause of the constitutional act would or would not give the "Protestant Clergy" any claim on the lands granted after a surrender; but, where any doubt exists, common prudence demands that a clause, releasing his Majesty from the obligation imposed by an imperial act, of allotting and appropriating clergy reserves, should form part of any act of commutation, whether optional or compulsory. Such a clause the provincial legislature is incompetent to pass. Such a clause the imperial parliament has introduced into "The Canada Tenures Act"—"without its being necessary for the validity of such grant, that any allotment or appropriation of lands for the support and maintenance of a Protestant clergy, should be therein made, any law or statute to the contrary thereof notwithstanding."

One section of "The Canada Tenures Act" I do admit to be faulty. I allude to the section, establishing the English law of descent of the commuted lands; but I am able to state, on the very best authority, that that section was surreptitiously engrafted, at the suggestion of two subordinate and irresponsible functionaries of Lower Canada, on the official draft of the Attorney General of the province.

ANTI-BUREAUCRAT.

23d May, 1835.

No. XIV

ON THE "ABUSES OF THE INTERFERENCE OF THE  
IMPERIAL PARLIAMENT."

Before I proceed to consider the "Canada Trade Act," I must recur to the "Canada Tenures Act."

Messrs. Nelson and Chapman say, "The feeling of insecurity of property generated by this act imperiously demands its immediate repeal, for which the people of Canada have repeatedly prayed."—Now I do not believe that "the people of Canada" are aware of the existence of the "nefarious act." It has hitherto been, with one exception, a dead letter; and even that one exception did not bring into play its "nefarious" provisions.

The Right Honourable Edward Ellice, as seignior of Beauharnois, is the only man that has availed himself of the commutation of tenure; and can even a solitary unit of "the people of Canada" complain, that, through Mr. Ellice's proceeding, his or her "rights" have been "swept away"?

In my last letter, I proved, on general and theoretical grounds, that the provincial act for the ratification of titles was, to a certain extent, as "nefarious" as the "Canada Tenures Act;" and I may now add, on special and practical grounds, that it has been infinitely more "nefarious."—While the

latter act, as I have shewn, has not "swept away" a single right, the former, which is potentially extinguishing mortgages every term, may have "swept away" the rights of hundreds of "the people of Canada." During the year 1834, fifty-three titles were ratified; and each of the fifty-three judgments may have possibly "swept away" an indefinite number of dormant claims.—So much for "the feeling of insecurity of property generated" by the "Canada Tenures Act."

I now proceed to discuss the merits of the "Canada Trade Act."

The latter part of the 46th section of the constitutional act of 1791, which I subjoin, specially reserved to the Imperial Parliament the power of regulating "the commerce to be carried on between the said two provinces, between either of the said provinces and any other part of his Majesty's dominions, or between either of the said provinces and any foreign country or state."

"And whereas it is necessary, for the general benefit of the British Empire, that such power of regulation of commerce should continue to be exercised by his Majesty, his heirs or successors, and the Parliament of Great Britain, subject nevertheless to the condition herein before recited, with respect to the application of any Duties which may be imposed for that purpose: Be it therefore enacted by the authority aforesaid, That nothing in this act contained shall extend, or be construed to extend, to prevent or affect the execution of any Law which hath been or shall at any time be made by his Majesty, his heirs or successors, and the parliament of Great Britain, for establishing regulations or prohibitions or for imposing, levying or

collecting duties for the regulation of Navigation, or for the Regulation of the commerce to be carried on between the said two provinces, or between either of the said provinces and any other part of his Majesty's dominions, or between either of the said provinces and any Foreign country or state or for appointing and directing the payment of drawbacks of such duties so imposed, or to give to his Majesty, his heirs or successors, any power or authority, with the advice and consent of such Legislative Councils, and Assemblies respectively, to vary or repeal any such Law or Laws, or any part thereof, or in any manner to prevent or obstruct the execution thereof."

The constitutional act, therefore, which, while it is in force, is equally binding on the imperial parliament and on the provincial legislature, restricts the mercantile sway of the latter, by reserving to the former the power, if circumstances call for its exercise, of regulating all external commerce.

The only ground, therefore, of inquiry, is, whether the "Canada Trade Act" interferes with the internal commerce of Lower Canada.

The commentators very vaguely say "The Canada Trade Act is also objected to partly on the same grounds as the above," namely, the "Canada Tenures Act."

The commentators, I suppose, here refer to certain sections, which imperfectly provided for a commutation of the feudal tenure, and which, I candidly admit, were disingenuously introduced into the bill without any connexion with its title and ostensible object. As the commentators say nothing of the special clauses on trade, I may fairly presume, that

they had nothing to say ; but I shall volunteer a few remarks on two apparently objectionable sections. I subjoin these sections.

**XXVIII.** And whereas the division of the province of Quebec into the two provinces of Upper and Lower Canada, was intended for the common benefit of his Majesty's subjects residing within both of the newly constituted provinces, and not in any manner to obstruct the intercourse or prejudice the trade to be carried on by the inhabitants of any part of the said late province of Quebec with Great Britain, or with other countries ; and it has accordingly been made a subject of mutual stipulation between the said two provinces, in the several agreements which have heretofore subsisted, that the province of Upper Canada should not impose any duties upon articles imported from Lower Canada, but would permit and allow the province of Lower Canada to impose such duties as they might think fit, upon articles imported into the said province of Lower Canada ; of which duties a certain proportion was by the said agreements appointed to be paid to the province of Upper Canada : And whereas in consequence of the inconvenience arising from the cessation of such agreements as above cited, it has been found expedient to remedy the evils now experienced in the province of Upper Canada, and to guard against such as might in future arise from the exercise of an exclusive control, by the Legislature of Lower Canada, over the imports and exports into and out of the port of Quebec ; and it is further expedient, in order to enable the said province of Upper Canada to meet the necessary charges upon its ordinary revenue, and to provide with sufficient certainty for the support of its civil government, to establish such control as may prevent the evils which have arisen or may arise from the Legislature of Lower Canada suffering to expire unexpectedly, or repeal-

ing suddenly, and without affording to Upper Canada an opportunity of remonstrance, existing duties, upon which the principal part of its revenue, and the necessary maintenance of its government may depend; be it therefore enacted, That all and every the duties which, at the time of the expiration of the last agreement between the said provinces of Upper and Lower Canada, were payable under any act or acts of the Province of Lower Canada, on the importation of any goods, wares, or commodities into the said Province of Lower Canada (except such as may have been imposed for the regulation of the trade by land or inland navigation, between the said Province and the United States of America), shall be payable and shall be levied according to the provisions contained in any such acts until any such act or acts for repealing or altering the said duties, or any part thereof respectively, shall be passed by the Legislative Council and Assembly of the said Province of Lower Canada, and until such act or acts, repealing or altering such duties, shall, after a copy thereof has been transmitted to the Governor, Lieutenant Governor or person administering the Government of the Province of Upper Canada, be laid before both Houses of the Imperial Parliament, according to the forms and provisions contained in a certain act of the Parliament of Great Britain, passed in the thirty-first year of the reign of his said late Majesty, intituled, An act to repeal certain parts of an act passed in the fourteenth year of his Majesty's reign, intituled, 'An act for making more effectual provision for the Government of the Province of Quebec, in North America,' and to make further provision for the Government of the said Province, and the Royal Assent thereto proclaimed within the Province of Lower Canada, according to the provisions of the said last-mentioned act.

XXIX. And be it further enacted, That from

and after the passing of this act, no act of the Legislature of the province of Lower Canada, whereby any additional or other duties shall or may be imposed on articles imported by sea into the said province of Lower Canada, and whereby the province of Upper Canada shall or may in any respect be directly or indirectly affected, shall have the force of law until the same shall have been laid before the Imperial Parliament, as provided in certain cases by the said act passed in the thirty-first year of his said late Majesty's reign, and the royal assent thereto published by proclamation in the said province of Lower Canada, a copy of such act having, within one month from the time of presenting the same for the royal assent in the said province, been transmitted by the Governor, Lieutenant-Governor, or person administering the Government of the province of Lower Canada, to the Governor, Lieutenant-Governor, or person administering the Government of the province of Upper Canada: Provided always nevertheless, that it shall not be necessary to transmit any such act to be laid before the Imperial Parliament, if, before the same shall have been presented for the royal assent within the said province of Lower Canada, the Legislative Council and House of Assembly of the said province of Upper Canada shall, by address to the Governor, Lieutenant-Governor, or person administering the Government of the said province of Upper Canada, pray that their concurrence in the imposition of the duties intended to be imposed by such act, may be signified to the Governor, Lieutenant-Governor, or person administering the Government of the said province of Lower Canada.

The latter section, being only prospective, comes clearly within the special reservation of the constitutional act; and the former as it rendered permanent merely those provincial duties, which the im-

special parliament might have itself imposed, comes also within the special reservation of the constitutional act. The 28th section might have been so worded, as not to leave the least room for doubt or cavil.

Having thus disposed of the abstract merits of the "Canada Trade Act," I shall add a few remarks on the comparative burdens of foreign trade in Lower Canada and in the United States.

I take a few articles from an alphabetically arranged tariff of the import-duties of the United States, and give the corresponding duties of Lower Canada.

Articles.	American Duty.	Canadian Duty.
Bed-ticking,	25 ¢ cent.	2½ ¢ cent.
Bolting Cloths,	25 do.	2½ do.
Bombazines,	10 do.	2½ do.
Boots,	1 dl. 50 c. ¢ pair	2½ do.
Brandy,	53, 57, or 63 c. ¢ g.	32 2-9 c. ¢ g.
Brass, manuf.	25 ¢ cent.	2½ ¢ cent.
Brown Sugar,	2½ cents ¢ lb.	½ d. Halifax.
Cabinet-ware,	30 ¢ cent.	2½ ¢ cent.
Caps, fur,	30 do.	2½ do.
Caps, women's,	25 do.	2½ do.
Clothing, ready made,	50 do.	2½ do.

In most of these instances, the American duties are ten times the Canadian duties; in brandy they are nearly double and in sugar precisely triple.

The following statement will shew, that these instances do not exceed the average of American duty.

The Tariff, which I quote, came into operation

on 4th March, 1833. Since that date I have not sufficient data for my purpose ; but as the reduction of duties, which it effected, was but trifling, the data of the preceding year will afford a sufficiently accurate result.

In 1832, the customs yielded 28,465,237 dollars 24 cents. In 1833, the imports amounted to 108,118,311 dollars ; and, as they annually increase, they must have been somewhat less in 1832. But if they were equal in both years, there would result an average duty of more than 25 per cent. on the whole of the importations.

My next article will recapitulate my arguments and close my remarks on the Petition of the Convention.

ANTI-BUREAUCRAT.

26th May, 1835.

No. XV.

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RECAPITULATION.

No. I. pointed out the necessity "of submitting to the British public a temperate review of the alleged grievances, and a plain calculation of the chances of rebellion."

No. II. proved, while it ridiculed the idea of proving such a truism, that Mr. Papineau would never dare to accomplish his threats of rebellion, "in reliance either on his own strength or on American aid," and inferred the absurdity of legislating at home for Lower Canada on any other grounds than those of the most impartial justice.

No. III. admitted, for the sake of argument, Messrs. Nelson and Chapman's assertion, that the Legislative Council is "self-elected,"—proved, that the Assembly is, in the strictest sense of the word, "self-elected," and inferred, merely to expose the absurdity of Messrs. Nelson and Chapman's conclusion, that the Assembly, as well as the Legislative Council, ought to be abolished.

It, also, proved, that the Legislative Council, if appointed by "the people," would be "self-elected," and would merely echo the decisions of the Assembly. In support of the latter position, it pointed out "the several grounds of distinction between the

two Houses of the American Congress," and maintained that such grounds of distinction could not exist to "prevent the perfect identity of two elective houses of legislation in Lower Canada."

No. IV. proved, that the Legislative Council is not, in any sense of the word, "self-elected." To prove that position, it shewed, that the alleged identity of the two councils did not exist, as the Legislative Council contained only a *fourth* part of the Executive Council, and the Executive Council only an *eighteenth* part of the Legislative Council—and that the alleged identity, if it did exist, would not prove the charge of self-election, as neither of the councils is "a council of control as to the nomination to public offices, and as to the removal from them."

No. V. attempted, on various grounds, to show, that the partial connexion between the executive and the legislature, which No. IV. had admitted, is necessary to secure the highest possible respectability of the legislature, and to maintain the balance of the constitution.

It quoted the full and decisive opinion of a republican jurist of distinguished character,—demonstrated that the offensive identity of the two councils exists in the American constitution, which the patriots of Lower Canada admire as a model of perfection—and stated, that an absolute separation of the three great departments of civil government would necessarily commit the fearful power of legislation to second-rate lawyers and statesmen.

No. VI. and No. VII. exposed the disingenu-

ousness and dishonesty of Messrs. Nelson and Chapman's assertions as to the "obstructive character" of the legislative council—proving that the language of these gentlemen was wilfully distorted, that their statements were exaggerated and false, and that, in regard to many of the rejected bills, they had imputed to the legislative council the "obstructive character" of the Colonial Secretary and even of the Assembly itself.

No. VIII. and No. IX. cleared the Legislative Council of the groundless charges of "fostering national animosities and distinctions" and of making improper appointments to office. The former charge they triumphantly hurled back on the assembly itself; the latter they ridiculed, inasmuch as the legislative council has not the power of appointing even its own officers. They, moreover, demonstrated, that the Canadians hold the larger share of public appointments, military, political and judicial.

No. X. successfully shewed, that the dependent position of the Judges is to be ascribed neither to the government nor to the legislative council, but to the assembly alone—defended Mr. Justice Gale against the silly attacks of the patriots and Mr. Spring Rice, and stated that the practice of elevating politicians to the bench was more prevalent in England than in Lower Canada.

No. XI. established the universality of the legislative supremacy of the mother-country, and maintained her abstract right to interfere, in case of necessity, even with the internal affairs of any colony.

No. XII. exposed the utter fallacy and entire dishonesty of the objections, urged by Messrs. Nelson and Chapman, against the British American Land Company.—It proved, that the public lands of the American Union, so far from yielding a direct revenue, had absorbed more than ten millions of dollars of the public money—that the public lands of individual states, so far from superseding taxation, produced a most paltry fraction of their respective revenues,—and that the alleged misappropriation of the wild lands of Lower Canada does not impose the necessity, as Messrs. Nelson and Chapman assert, of direct taxation.

No. XIII. proved that the “Canada Tenures Act” does not merit Messrs. Nelson and Chapman’s epithet of “nefarious,”—that a provincial act for the ratification of titles, which emanated from the patriots themselves, is “nefarious” on the same untenable ground of “sweeping away” private rights,—and that the provincial legislature was incompetent to pass any act for commuting tenures, equally safe and satisfactory with the “Canada Tenures Act.”

No. XIV. compared the practical effects of the imperial statute for the commutation of tenures and of the provincial act for the ratification of titles, and established the conclusion, that the latter has been, in reality, much more “nefarious” than the former.

It, moreover, proved, that the “Canada Trade Act” did not violate the constitutional act of 1791, and shewed, that the duties on imports are far

higher in the United States than in Lower Canada.

To give my labours greater weight at home, I may add, that not one sentence of these communications has been, directly or indirectly, refuted or assailed by any writer of the patriotic faction. If silence implies consent, my lucubrations have been sanctioned even by the champions of Mr. Papineau and elective institutions; and if any of my statements are questioned on the other side of the water, the intelligent reader will easily appreciate the honesty and veracity of so indirect a reply. The patriotic writers are, in truth, better armed for attack than for defence. They shun controversy, as being likely to elicit truth and expose ignorance and dishonesty.

ANTI-BUREAUCRAT.

28th May, 1835.

## APPENDIX, NO. I.

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*De la Minerve, gazette publié a Montréal,  
Bas-Canada.*

« Toutes les protestations d'amour pa-  
« ternel pour les colons, &c. ne sont que  
« de vaines parades de formes, vides de  
« sens, aux quelles nous ne croyons pas. »

Numéro 104, 9 février 1832, notes édito-  
riales de la *Minerve*.

« Le peuple tâchera d'obtenir le dresse-  
« ment de ses griefs par les moyens consti-  
« tutionnels dont il s'est servi, quoique avec  
« peu de réussite, jusqu'à présent ; et si ces  
« moyens ne réussissent point il verra en-  
« suite ce qu'il aura à faire. »

Un peu plus bas.

« Canadiens ! songez au sort qu'ont é-  
« prouvé de la part du gouvernement An-  
« glais, les Acadiens descendus comme  
« nous des Français. Vous soumettez-  
« vous tranquillement à une même destinée  
« de la part de l'Angleterre ? »

Vient l'écrit S..... Numéro, 2, de la  
*Minerve* volume 6, 16 février 1832.

« Il existe ici deux parus entièrement

« opposés d'intérêts et de mœurs, les Cana-  
 « diens et les Anglais. Ces premiers nés  
 « français; en ont les habitudes et le carac-  
 « tère, et ont hérité de leurs pères de la  
 « haine pour les Anglais qui à leur tour  
 « voyant en eux des fils de la France, les  
 « détestent. Ces deux partis ne pourront  
 « jamais se réunir, et ne resteront pas tou-  
 « jours tranquilles; c'est un mauvais amal-  
 « game d'intérêts, de mœurs, de langue et  
 « de religion, qui tôt ou tard produira une  
 « collision. On croit assez à la possibilité  
 « d'une révolution, mais on la croit éloi-  
 « gnée, moi je pense qu'elle ne tardera pas.  
 « Qu'on médite bien ces paroles d'un  
 « grand écrivain, et l'on ne traitera plus de  
 « chimères une *révolution* et une séparation  
 « de la mère patrie. Le plus grand mal-  
 « heur pour l'homme politique, dit-il, c'est  
 « d'obéir à une puissance étrangère, au-  
 « cune humiliation, aucun tourment de  
 « cœur ne peut être comparé à celui-là....  
 « Je le répète une *séparation immédiate*  
 « *d'avec la mère-patrie* c'est le seul moyen  
 « de conserver notre nationalité.»

*Minerve*, le 21 mai.

« Nous avons encore quelque confiance  
 « dans les tribunaux et dans le gouverne-  
 « ment de sa majesté. Il faut d'abord  
 « tenter ces moyens; *le Ciel fera le reste.*»

Le 9 juillet. Assemblée de Chambly,  
 11e résolution.

« Et d'ailleurs l'oubli de nos droits et le

« déni fréquent de justice de la part de  
 « l'Angleterre, ont tendu à rompre le con-  
 « trat qui existe entr'elle et nous, notre at-  
 « tachment à la constitution anglaise doit  
 « nous porter à attendre l'effet de nouvelles  
 « pétitions, etc.»

Le 22 juin, en parlant de la procession de la Fête-Dieu : « Si les troupes s'y montrent que tout bon citoyen ferme ses fenêtres et tende de noir le devant de sa maison !!! »

*Substance du discours prononcé par l'hon.  
 M. Debartzch dans le conseil législatif,  
 Mercredi, 23 janvier, 1833.*

Il observa, « Qu'il espérait que le conseil législatif serait entièrement aboli, et que la législature ne se composerait plus que d'un gouverneur et de l'assemblée seulement :

« Qu'alors les intérêts du peuple seraient efficacement protégés, et non avant. La chambre d'assemblée ferait alors connaître les besoins du peuple dans ses *bills*, et si le gouverneur les rejetait, il serait déplacé, et un autre gouverneur les sanctionnerait.»

L'hon. M. Ryland, s'adressant à M. Debartzch, répéta en substance les paroles ci-dessus. et demanda s'il avait bien compris M. Debartzch, et s'il s'était exprimé ainsi. M. Debartzch répondit : Oui, oui, oui, vous avez bien compris.»

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\* Il faut qu'un MINISTRE soit bien au-

*dacieux et effronté* pour venir encore une fois proposer à notre chambre d'assemblée d'accorder une liste civile pour la vie du roi.» — *Minerve du 6 Février, 1832.*

« Il ne s'agit pour leur moment que de montrer notre mépris pour la démarche du conseil... Avant qu'il soit peu le *peuple* sera appelé à prendre d'autres mesures... Il tachera d'obtenir le redressement de ses griefs par les moyens constitutionnels dont il s'est servi, quoiqu'avec peu de réussite jusqu'à présent ; et si ces moyens ne réussissent point, *il verra ensuite ce qu'il aura à faire...* Un état bien policé doit-il permettre que quelques individus ignorans, obscurs, méprisé généralement, apportent des obstacles au bonheur de CINQ CENT MILLE habitans qu'ils veulent rendre esclaves... Convient-il à des hommes libres de se laisser tranquillement enchaîner et piller. Nous augurons trop favorablement de l'esprit de nos compatriotes pour les croire capable de cette bassesse.» — *Minerve du 9 Février, 1832.*

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*Extrait de l'Echo du Pays, publié au Village Debartzch, Bas-Canada.*

«Où vous le savez, mes amis, vos droits les plus sacrés, on tente de vous les arracher. On méprise et on n'écoute plus vos plaintes. On veut représenter les Canadiens comme des Sauvages barbares qu'il faut plonger dans les fers du plus dur es-

elavage. Naguère on a versé le sang  
 Canadien, et nos ennemis se réjouiraient  
 de voir le dernier des Canadiens à son  
 dernier soupir, et **VOUDRAIENT DANS  
 LEUR DELIRE BARBARE NE  
 FAIRE DE TOUS LES CANADIENS  
 QU'UNE SEULE TÊTE, POUR A-  
 VOIR LE PLAISIR FEROCÉ DE  
 L'ABATRE D'UN SEUL COUP.** Mais  
 il faut jeter le voile sur ces sujets d'horreur  
 et nous opposer sans relâche à *l'ambition  
 de ces monstres avides de place et d'honneur  
 et qui tout en maltraitant les Canadiens ne  
 vivent que de leurs sueurs et de leurs tra-  
 vaux.* Oui, nous avons à nous plaindre  
 d'une infinité de maux dont on veut nous  
 accabler. Vous connaissez les tentatives  
 des Bureaucrates *qui tentent de s'emparer  
 de vos terres et de vos biens.* Témoins cet  
 agiotage injuste, et les efforts de cette so-  
 ciété fameuse que la Mère-Patrie vient  
 d'autoriser à l'achat de vos terres. **CETTE  
 SOCIÉTÉ COMPOSÉE DE PROPRI-  
 ÉTAIRES AVIDES, ET AVARES,  
 MÉDITE LA RUINE DES CANADI-  
 ENS EN VOULANT LES CHASSER  
 DU SOL QUI LES A VUS NAITRE.**  
 Quoi, chers compatriotes souffrirez-vous  
 que vos terres qui viennent de vos pères ;  
 que vous avez cultivées avec tant de soin,  
 et que votre courage vous a fait arroser si  
 souvent de vos sueurs, souffrirez vous, dis-  
 je qu'elles passent entre des mains étran-  
 gères ? et que vos enfans, objets de votre

tendresse, aillent honteusement mendier dans un pays lointain, du pain que vous leur promettiez de manger dans le leur ? Je vois se peindre sur vos visages l'expression de la douleur, lorsque vous pensez aux trames de nos ennemis, qui voudraient vous *chasser* de ce beau pays, que vous chérissez : de ce pays où nos premiers missionnaires ont perdu la vie et versé leur sang pour y planter la foi de vos pères.»

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« LES CANADIENS COMPRENNENT QUE S'IL Y A DES INCONVENIENS A TIRER L'ÉPÉE, IL Y EN A DE BIEN PLUS GRAVES A LE REDOUTER, ET DE NUISIBLES A LEUR NATIONALITÉ, EN LA LAISANT DANS LE FOURREAU. *Puissent les horreurs de la guerre civile ne pas précéder le retour nécessaire de la liberté ! Hélas ! en prononçant ce vœu du fond de notre cœur, il ne nous paraît pas possible qu'il soit exaucé.*»

Peu satisfait de cette énonciation de principes, dans l'ivresse de sa phrénésie patriotique, il adresse l'exhortation suivante au gouvernement et à ceux qui le soutiennent.

- « Des champs désolés de nos pères,
- « Fuyez barbares oppresseurs ;
- « Reconnaissez les traits sévères
- « D'un Dieu juste, d'un Dieu vengeur. »

Et s'il arrivait que le gouvernement et ses amis ne se rendissent pas, à l'invitation, les conséquences en sont prévues et les chances calculées :

« Des flots de sang couleraient ; mais au prix de ce sang les Canadiens gagneraient ils la liberté et la force ? Pourquoi non ? Seraient-ils aveugles pour ne pas voir la lumière qui brille aux Etats-Unis. »

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## UNION PATRIOTIQUE.

DE ST. BENOIT, COMTE DES DEUX MONTAGNES.

A une assemblée des habitans de la Paroisse St. Benoit, tenue à la Porte de l'Eglise du lieu, Jeudi, le dix-huit juin mil huit cent trente cinq, il a été.

Résolu, 1. Que les habitans de cette paroisse voient avec satisfaction la formation en cette Province, sous le titre d'*Union Patriotique*, d'une association nationale destinée à assurer au Peuple une protection mutuelle, et à fournir dans des temps de crises politiques, au moyen de légères contributions volontaires, les moyens de lutter contre l'oppression militaire, administrative et judiciaire.

Résolu, 2. Que ce moyen, heureusement adopté en Irlande, a réussi à assurer à la population de cette Ile opprimée, le respect, et l'influence à laquelle elle à droit

et qu'une union du même genre, cimentée étroitement entre tous les intérêts populaires, tant en cette Province que dans les colonies voisines, est de nature à promettre le même résultat.

**Résolu, 3.** Que la formation d'une association de cette nature, comme moyen de protection personnelle et individuelle est devenue d'autant plus nécessaire, que les habitans du Pays qui n'ont pas courbé ignominieusement la tête sous le despotisme Européen et Colonial, ne peuvent espérer des autorités administratives et judiciaires ou d'aucune autre en ce pays, une protection suffisante pour leur vie, leur liberté et leur honneur ; et que les meurtres, les assassinats et les violences impunies dont ils sont tous les jours victimes, nécessiteront de la part des membres de l'*Union Patriotique*, la détermination de repousser individuellement et collectivement par la force des agressions de ce genre, et de prêter main-forte dans les mêmes cas aux autres parties de la population qui y seront soumises.

Alors les Articles d'Association de l'*Union Patriotique* adoptés à Montréal, et approuvés par la comité de correspondance le deux Mai dernier, ayant été lus, ils ont été adoptés unanimement, et on a commencé à recevoir les signatures et les souscriptions.

Il a aussi été résolu que jusqu'à ce que l'élection générale ait lieu le second lundi de Juin, mil huit cent trente six, les officiers du bureau de St. Benoit seront.

Lieut Col. Ignace Raizenne, écr., Président.

J. J. Girouard, écr., M. P. P. 1er Vice Président.

J. Barelo, écr., er, 2me Vice Président.

L. H. Masson, écr., Secrétaire Correspond.

M. F. H. Lemaire, Secrétaire.

Jean Baptiste Dumouchel, écr., Trés.

## APPENDIX, NO. II.

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*To the Editor of the MONTREAL HERALD.*

Montreal 11th May, 1835.

SIR, Will you do myself and the country the favour to insert in the Herald the following singular document? It is the translation of part of a French pamphlet, printed in Montreal, but circulated only in the country. It is, in truth, intended only for the most illiterate and most credulous portion of the community.

From the elaborate vulgarity of the language, and the unblushing effrontery of the sentiments, I have little hesitation in ascribing the pamphlet to the pen of Mr. Papineau,

I remain,

Sir,

Your humble servant,

ANTI-CLIQUECRAT.

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### INTRODUCTION.

Since 1792, Canada has enjoyed the advantage of a Constitution, which permits her to participate in the legislation of the country, by the means of a House of Assembly, elected by a majority of votes, in each of the towns and counties. The friends of

power extol this gift very highly, under pretext that we are indebted for it to the magnanimous philanthropy of the English Government. The truth is, that Constitution was granted to us by England only from necessity. She gave it with regret; and her Governors are but too successful in following up the intentions of the Metropolitan State, by endeavouring daily to cripple the exercise of constitutional rights, either by a blind adherence to the orders which they receive or yielding to the impulse of their own propensity towards an absolute administration. In order to arrive at the proof of what is here asserted, viz., that the Constitution was only granted to us by England from sheer necessity, it will suffice to review that period of our history:—In 1774, the American colonies, after having for a long time, and in vain, solicited the mother country to grant them liberal institutions, adopted the resolution to resist oppression and to conquer their independence. War was kindled in that land, until then peaceable, and two years were sufficient, for the brave Americans required no more than two years, with the assistance of the French, to establish within their country a free and constitutional government. Such a neighbourhood was highly dangerous for Canada, whose inhabitants had for neighbours, a nation, which had just formed itself, which had burst the chains of bondage with which the mother country had attempted to overburden it, and which was already advancing in prosperity. Such an example might stimulate the Canadian people, and inspire them with the wish of becoming a part of the American confederation, which was prepared to receive them with open arms. It might the more readily have done so, because its French spirit was far from harmonising with that of the English, and that British sway might have offended its pride of origin, even if the religious principles of the rulers had not been diametrically opposed to those of the descendants of

the Catholics. Nevertheless, the Canadians, pursuing a conscientious and straight-forward line of conduct, removed from any subterfuge unworthy of their ancestry, continued to remain faithful to England, and resisted the instigations made to them by the United States, at that period. It wished to be indebted for a Constitution to the equity of its protectors,—it presumed that England, so proud of her constitutional liberty at home, would not hesitate to extend the advantages of that constitution to the important colony which had been subjected to her sway for twenty years. In 1784 the colony began to petition the mother country for a Constitution. During six years the latter was deaf to the prayers of the Canadian people; but at last, sensible that a longer refusal would bring about the loss of Canada, and an annexation of it to the American Union, she determined upon yielding that, which, under other circumstances, she never would have granted. Another circumstance, also, doubtlessly tended to influence the decision of England. From 1787, a revolution had taken place in France; the people had resumed their rights, the constitutional system had extended its empire over that country, and the common origin of Frenchmen and Canadians ought to have caused to vibrate in the hearts of the latter the funeral chime of absolute power. In 1791, the British Parliament passed the Constitutional Act of Lower Canada, and a Constitutional charter was published in the province. But in granting this favour the spirit of British domination was made manifest; the English Legislators took care to establish such an equiponderance as would enable them, at will, to destroy the favour which they seemed to grant. Therefore, the powers of the Canadian House of Commons were so ambiguously defined as to be susceptible of different interpretations; so that its privileges might be curtailed. Therefore, a species of aristocracy was created by an upper house, call-

ted the Legislative Council, in such a manner as to frustrate every measure originating in the Lower House, which might be in opposition to the views of the administration. The Constitution was granted merely to propitiate the people, and to wheedle them in the name of liberty; but not to recognise any portion of sovereignty which belongs to the people; nor to secure to the country the good effects which it ought to derive from so noble an institution. Notwithstanding, the country experienced, during a long period, the right of election, without molestation; for a long time it was enabled to follow the bent of its own inclination in sending to the house men who could firmly maintain popular rights, and struggle successfully against the snares incessantly laid by the administration, with a view to shelter itself from a control which thwarted it, and claimed the right of reducing it within the limits assigned by the Constitution.

The protection, or to speak more plainly, English sovereignty over Canada, brought other evils in its train. A swarm of Britons hastened to the shores of the new British colony, to avail themselves of its advantages to improve their own condition.

The lucrative offices of the administration were profusely distributed among them, and they continued to hold them, to the exclusion of the ancient inhabitants of the country, who were removed as far as possible from all the positions which they might have occupied for the advantage of their fellow countrymen, for their protection against the abuses of the judiciary or the administration.

The Government seized upon all the waste lands of the Crown. Those invaluable estates, and which are becoming more so every year, ought to have been left, or the greater part thereof, to the country: they would have proved instrumental in ameliorating every branch—in making new roads,

building new bridges, opening ports, establishing institutions, embellishing the cities, erecting Roman Catholic churches, founding a school in every village, endowing colleges—in a word, a number of things of which we are at present deprived, and which the want of capital compels us to neglect. would have been accomplished by the proceeds of the public lands, and would have produced to the province those improvements by which the civilization of nations is advanced. // A neighbouring nation affords us an example of what might have been accomplished in our own country, if a constitutional system had been rigidly followed, and the Government had left the control and disposal of the national domain to us. The United States, within the time that we are compelled to remain stationary, have introduced among them improvements without number, which have raised them nearly to the rank of the oldest European nations. To what are they indebted for so much glory and such advantages? To a constitutional system firmly established, and followed up with good faith; to the territorial riches which the country (*Pays*) can dispose of daily, and which, instead of being the booty of a paltry number, constitute the treasure of the country at large.

// It is unheard of, that a monarch should seize upon all the lands of a state and convert the same to his own sole use. In all kingdoms the ungranted lands become national property! they form the common treasure, they are managed for the general advantage, and are only sold in the name of the nation, and each citizen receives a portion of the purchase-money, by the amelioration which the proceeds are the means of introducing into the country. Here it is quite the contrary; these rich territories have been wrested from Canada. The men in power have squandered them in a most scandalous manner, by distributing a great portion of them amongst their dependants, who, for the most part,

are persons born without the colony. Ninety-four individuals have, in this way, obtained, gratuitously, grants to the amount of 2,980,679 arpents; and the men who thus fattened on public property; have not, in consequence, become better friends of the people.

The remainder of those lands, so wrongfully called "Crown Lands," has been lately conceded to a Company of Speculators in England, who will realize immense profits from them. while the Canadian people will be shut out from participating in those advantages; as the proceeds arising from the sale of those lands, will not be expended in the Province, no benefit can result therefrom to the people of this country. But this measure is accompanied by a political object on the part of the Colonial administration. The growing knowledge of the Canadians and their inclination towards right have alarmed the Britons; they wish to settle our soil with their own children, in order to obtain a majority sufficient to balance the elections in Canada; and afterwards by force of oppression, to compel the descendants of the Frenchmen, who profess a religion different from theirs, to abandon the place of their birth, the place where the bones of their fathers repose, a land to which they cling as their *sacred Home*. // The Canadian population is too numerous to admit of the Britons inflicting upon them the horrors and desolation with which they visited the Acadians; but with time, skilfulness, and patience, they will accomplish the same result, and before long, the title of Canadian, which bears with it so many honourable recollections derived from that grand European nation the French, will be obliterated from the history of contemporary nations.

// In consequence of the facilities afforded by the administration, for the settlement of Britons within our colony, they came in shoals to our shores, to push their fortunes; every species of office was

immediately filled with these new-comers, but that was not sufficient for British cupidity: others of them established themselves in our cities, they were encouraged and supported by their fellow countrymen, and secretly extending their schemes, they slipt into every profession, and made themselves masters of all the trade as well foreign as domestic. The Canadians by their indolence, contributed towards the fortunes of the British, they retired from trade satisfied with the moderate competence they had acquired, they did not support the young beginners in trade; and gradually all the Canadian merchants were supplanted by Britons.

For many years, we were not aware of these secret practices, because the Britons were occupied in accumulating wealth, and not considering themselves sufficiently numerous, took but a small share in our political affairs; the elections remained free from their intrigues; because they could have had no chance of practising any amongst a population nine times more numerous than themselves. But within these five or six years past they go about boldly seeking to bow down the neck of every child of the soil, [*enfuns du sol*]

What is it then, which inspires them with such audacity, for they are not equal in numbers with the Canadians? It is altogether to the power of office, which they hold from a Government obliging towards them alone; the power of wealth, not cash, but a fictitious credit; and, finally, to our own indifference to the interests of the country.

With the offices, our enemies became masters of those who hold them under their authority, the latter finding their conscience placed in the scale against famine, and the fate of their families put in jeopardy, yield to the cruel necessity of a blind submission to the orders of the Clerkarchy, [*Bureaucracy*].— Money, that sinew of every thing and too frequently of every action, is one of the most powerful auxiliaries the British possess. They have established

a system of paper money, based solely upon their own credit, and which our *habitans* have had the folly to receive as ready money, although it is not hard cash current amongst all nations; but on the contrary which is of no value, and without the limits of the province, would not be received by any person.— They can at their pleasure, with these banking institutions which they direct, favour their friends, by procuring them capital for all their undertakings, and crush their opponents in refusing them discount.

Our personal indifference in the first instance, lent a helping hand to the scourge which now assails us. If at the outset we had made common cause as we now do, the Britons would never have reached the apogee of their prosperity, they would not this day wield the arms which we have allowed them to pick up to enslave us, and to insist upon our great majority succumbing to their small minority.

British arrogance was never carried to such a pitch as during the last election. In 1832 they had already begun to try their strength, aided by the magistrates whom they had under their control they endeavoured to bring about a conflict between the Canadians and their opponents, in order to afford a pretext to call out British troops, who ought to have respected the sanctuary of the poll, and who ought not to have appeared there except at the request of the returning officer, but who, nevertheless, came and used their arms against defenceless citizens in the streets of a peaceable town.

The assassination of three of our countrymen is due to their infernal plots, and thanks to the partiality of the creatures placed in power by the Government, that blood has not yet been revenged, the guilty have not yet been brought to justice.

The events which occurred after that time, the firmness displayed by the Canadian Deputies the resolutions which they passed at the

commencement of 1834, which were approved of by 100,000 signatures of the most pure *habitans* of this province, made the British feel that no effort should be spared to secure a triumph at the elections in 1834.

It was an important period for the Clerkarchy (Bureaucracy); if they could succeed in returning their candidates, they would have a pliant house of assembly which would harmonize with the Legislative Council, in seconding the views of the Executive. It would then have been an easy matter to alter the law of election, and to adopt resolutions subversive of every measure which had been previously accomplished for the benefit of the PEOPLE; and to establish such an order of things as would for ever exclude the Canadians from possessing in public affairs, that influence which had always belonged to their numbers, their ancient possessions, and their inviolable attachment to their native land. A single session of a house of assembly composed of the Clerkarchy, would suffice to destroy the advantages which must result from a struggle which has lasted so many years, and which is about drawing to a close. If, as there was little doubt, the patriotic party could maintain its ground; if the progress of reform could continue; if the firmness of the Canadian representatives shewed itself well worthy of the continued confidence of their constituents; if Britain should see herself forced to yield to all the demands of the Colony, not only would the Clerkarchy (*Bureaucracy*) lose all their offices, which would be then distributed according to popular justice and common sense; not only would the British see their favours, honors and profits eclipsed, and the preponderance of that aristocracy of which they are so proud; but they would still further be compelled to assist in the act of equity, calculated to wound most deeply their jealous supremacy. They ought to be compelled to bend under the will of the majority. These

men who pretend, notwithstanding their petty number, to dictate to and command powerful bodies, (masses) In a word, they would in despair be compelled to see the government yielding to the general voice—restore power to the "*enfants du sol*," whom they hate as much from political rancour, as from the difference which exists between their origin, their religion, their character and habits. //

Three months before the election they were busy in erecting their batteries, and in agitating the minds of the electors. Their newspapers scattered every where doubt and mistrust. They endeavored to excite the patriotic Irish catholics, and to persuade them that the Canadians were their most mortal enemies. At Montreal, they made up the famous subscription of eleven hundred pounds, which was to be made use of in seducing the greedy, or in paying the wretches which they induced to enlist, for the purpose of alarming the electors, or giving battle to the patriots, or of destroying peaceable citizens; and strange to tell, there were to be found, on this immoral subscription list, the names of men who contributed to a large amount, and who a few days after became scandalous bankrupts. Thus these imprudent agitators employed against the country the money, which the confidence of our fellow citizens had put into their hands. Little did the latter foresee to what bad use that money would be applied. Other subscriptions took place at Quebec; and wherever a Clerkarchy could be found in sufficient numbers to attempt a struggle, every where were to be seen infamous associations, for the collection of money to support projects hostile to the colony.

Their forces were at first concentrated at the West Ward of Montreal: they gave a preference to this Ward for two reasons—first, their partisans were in greater numbers there, and there it was, again, that was to become a candidate, the man whom they hate the most; because it is *he* who has

manifested the most ardour for the suppression of abuses—he who had never shewn a pale cheek—never retreated a step—never bent before power—he who had with the most unflinching courage denounced the ambitious pretensions of the British—he whose eloquence was the most persuasive and irresistible—in a word, he upon whom the people looked as their head and safest guide.

It is not for us to describe the scenes which took place during the first days of this election; the knock-down system which had been acted upon when the Canadians were off their guard; the evolutions of the Clerkarchy, who during nearly a whole month, kept a whole city in dread and confusion. It is not for us to speak of the attempt made at Quebec, for in doing so we would have to congratulate our compatriots of that city upon the courage which they have shewn, and the noble example they have given. Still less shall we speak of what took place at Sorel; for there, we would only have to present the picture of a crime consummated—we would only have to drop a tear on the grave of Marcoux, that new martyr of patriotism—we could only find words to call for the sword of justice to transfix his assassins no matter who they may be.

But of all the prowess displayed by the anti-popular party—that which was exhibited at the election of the Lake of Two Mountains, does not possess the least interest. There it is that one may form an idea of all that wickedness, that presided over the plots of the Clerkarchy—their perfidy, their infamous efforts, their revolting provocations, and their cowardly attacks; those are the events which it has been our wish, more particularly, to trace, not to bring home to our fellow citizens, the knowledge, which they already possess, but that this narrative may remain among our annals, that it may be transmitted to our children, that it may remain as an eternal monument to the disgrace of our enemies and to the glory of the patriots.

*From the Montreal Herald of 13th May.*

We now beg to offer a few observations on the pamphlet, translated by "Anti-Cliquocrat."

The first portion of the pamphlet attempts to eradicate from the breasts of the people any and every sentiment of gratitude for the constitutional act of 1791, by affirming that that act was extorted from a reluctant government by the dread of physical force. Such an affirmation is meant to serve the double purpose of seducing the Canadians from their allegiance and of representing insurrectionary violence as the only means of obtaining a redress of grievances. The affirmation, whether true or false, is so utterly at variance with the oft repeated sentiments of the patrician faction, and, in particular, with the petition of 1827, that it demands not the slightest notice. We may, however, mention, that the references to the Americans and the French of 1791 are perfectly ridiculous. The Americans, as the Latin grammar says, had their hands full at home; and the French, however anxious to propagate their new-fangled theories or to cripple Great Britain, could not have landed a single soldier in Canada in the face of a resistless navy.

The pamphlet eloquently expounds as a convenient grievance, that "a swarm of Britons hastened to the shores of the new British colony, to avail themselves of its advantages to improve their own condition." The grievance would have appeared much more plausible, had not the writer confessed, that Canada became by conquest a "British" colony. That thoughtless admission knocks the grievance on the

head, for who had a better right than "Britons" to hasten even in "a swarm" to a "British" colony? The fatal mistake of the patriots has uniformly been that of considering the Canadians not as the part of a mighty nation but as the whole of a petty one.— That Canada, which British valour and British generosity had rescued from hereditary thralldom, should be closed against the influx of Britons, was an idea, that certainly never entered the brain of any Canadian previously to the last seven years of open ingratitude and threatened insurrection.

With equally silly passages of the same Anti-British tendency, the pamphlet abounds. "In consequence of the facilities afforded by the administration, for the settlement of Britons within our colony, they came in shoals to our shores, to push their fortunes." "Our" colony and "our" shores are bold and clear illustrations of the deadly hatred of the British name and of the puerile assumption of a petty nationality. "Our" colony! "our" shores! "our" waste lands! "our" army! "our" fleet! "our" treasury! "our" Townships! "our" St. Lawrence! "our" canals! "our" cahots! "our" everything but common sense, common honesty and common gratitude.

Again "others of them established themselves in our cities; they were encouraged and supported by their fellow countrymen, and made themselves masters of all the trade, as well foreign as domestic."— What a heavy charge! What an awful amount of wickedness in a Briton to plant a foot in "cities.— It was bad enough in such a biped to pollute "our'

SHORES ; to enter "our" CITIES was a crime worthy of death. The pamphleteering patriot may, however, thank Mr. Thomas Spring Rice for visiting such audacity in the present day with a pecuniary penalty, in the shape of an emigrant tax. The sentence, immediately subsequent to our last quotation, explains the secret of the success of the Britons ; "The Canadians by their indolence contributed to the fortunes of the British." Here we have, at last, an acknowledgement of the truth, that the commercial superiority of the Britons is owing not to the partiality of the government but to their own energy and skill.

By way of marking more strongly the hatred of the British name, the pamphleteering patriot, in allusion to America, speaks of "a constitutional system formerly established and followed up with good faith." Against the pamphleteering patriot's opinion we are fortunately able to quote the following paragraph from an American journal :

"It is not only *very* questionable with us, but with some of the most liberal and enlightened men in the country, whether a limited monarchy, such as could be digested and established under the light and intelligence of the present age, would not secure to the entire community "life, liberty, and the pursuit of happiness" in a greater degree than the government as now existing and operating in this country."—*Woodstock Republican & Courier*.

The pamphleteering patriot is very profound on the subject of the waste lands of the crown. "The government" says he, "seized upon all the waste lands of the crown." What means this? The fol-

lowing scrap of patriotic wisdom answers the question. "It is unheard of, that a monarch should seize on all the lands of a state and convert them to his own sole use." To shew that these absurd words are meant seriously by the writer, we shall proceed to quote some of his other brilliant passages. "The remainder of those lands, so wrongfully called crown lands, has lately been conceded to a company of speculators." "As the proceeds arising from the sale of these lands will not be expended in the province, no benefit can result therefrom to the people of the country." The falsehood in the first of these two passages is too obvious to be pointed out. If it were true, there would not be a square foot of ungranted land in the province; but we need not mention that the lands, granted to the "company of speculators," were but a small portion of "the remainder of those lands." The second paragraph is false in premises, and fallacious in conclusion. Half of the purchase-money of the company's lands will be expended within the province, as the proceeds of waste lands, according to the pamphleteer, ought to be expended, "in making new roads, and building new bridges." Whether the other half of the proceeds be expended in Lower Canada or in Van Dieman's Land, the pamphleteer and his friends have little right to complain, for according to the fashion of the often quoted and much admired republic, the ungranted lands were the natural means of repaying the expenses of the war. In America, they were claimed by congress for this purpose; and, in any conquered province, they

ought, therefore, to have been "seized" by his most gracious majesty, not "for his own sole use" but for the benefit of the empire.

The patriotic pamphleteer, in speaking of the comparative strength of the two races, states, that, for many years, the Britons rarely attempted to interfere in elections, but that "within these five or six years they go about boldly and seek to bow down the neck of every child of the soil." Such is the statement of the pamphleteer. Now the facts are the very reverse of that statement. The "Britons" had at one time, far greater influence over the elections than what they now have; and it was to counteract their apparently undue influence that the faction of Mr. Louis Joseph Papineau was organized. During "these five or six years," the Canadian demagogues may be said to "go about boldly, and seek to bow down the neck" of every "foreign Briton." It is with the view of bowing down the neck of every Briton, that the patriots clamour for purely elective institutions, because, through their operation, the British minority, according to the pamphleteer "must be compelled to bend under the will of the majority." Such a declaration is, at least, sufficiently explicit.

The means by which the Britons strive to "bow down the neck" of every child of the soil, are two-fold. They issue paper-money, and shoot rioters. These two offences are expanded by the pamphleteer into the following two sentences: "They have established a system of paper-money, based solely upon their own credit, and which our *habitans* have

had the folly to receive as ready money, although it is not hard cash, current among all nations, but, on the contrary, which is of no value, and, without the limits of the province, would not be received by any person.”—“The assassination of three of our countrymen is due to these infernal plots, and, thanks to the partiality of the creatures placed in power by the government, that blood has not yet been revenged; the guilty have not yet been brought to justice.”—The first of these sentences is equally severe on all paper-money, whether issued by the Bank of England or the Bank of Montreal, or by the countless banks of the often quoted and much praised republic. It is the production of a most ignorant bigot. The second sentence is Mr. Papineau’s hundredth repetition of a charge of murder against the military, the judiciary and the executive.

We are sick, and so are our readers, of the infamous pamphlet.

ON THE  
PETITION OF THE CONSTITUTIONALISTS.

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No. I.

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INTRODUCTION.

I have postponed the execution of the second part of my proposed task, till the final decision of the new cabinet in regard to the mode of investigating and adjusting the provincial difficulties should fix, with some degree of certainty, the relative position of the constitutional party with respect to the British government and the French faction. The mandate of Lord Aylmer's recall and the ministerial intention of appointing three commissioners for collecting information within the province itself are almost my only means of ascertaining the Canadian policy of Lord Melbourne's administration. Without entering into a very minute analysis either of official despatches or of parliamentary conversations, I can confidently appeal to the almost universal impression of all parties, that all the sayings and all the doings of the present ministry spring from a desire of conciliating the stubborn majority of the assembly.

In my second article on "The Petition of the

Convention," I pointed out the absurdity of conciliating Mr. Papineau's party through a dread of the physical resistance of the French Canadians; and I must now attempt to shew that any further extension of conciliatory kindness towards that man's party will be not less dangerous than absurd.

As I am not in the secrets of Lord Melbourne's cabinet, I cannot know the nature or extent of any meditated concessions; but I do know, that almost any farther concession, whether of legislative authority or of executive power, would render the predominance of the French faction intolerable to the English population of the province and inconsistent with the integrity of the empire. What other proof of this assertion need I offer, than that, for the last two years, Mr. Papineau, through the abuse even of his existing privileges, has had his foot on the neck of every member of the executive and the judicial departments? The assembly has, for a long time, tried to subject to its irresponsible will the legislative council and the executive government, the bulwarks of the unrepresented or misrepresented minority of the population; and, if its insane ambition of exclusive influence be in any degree gratified by the conciliatory concessions of the imperial government, the unrepresented or misrepresented minority will be as grievously oppressed as is at present almost every provincial functionary. The patriots do not hesitate to avow that the majority is every thing and that the minority is nothing; so that the uncontrolled domination of the majority would deprive

the minority of any and every guarantee for property, liberty or life. What remedy would the minority have but physical resistance or an appeal to the imperial authorities? The imperial authorities, however, must, according to our supposition, have previously abandoned the provincial constitutionalists; and physical resistance must be the only means of rescuing the countrymen of Wolfe from the oppression and the dishonour of a French yoke. A defeat is sufficiently galling to national pride; but the oppression of the victors by the vanquished is infinitely more so. I have said that physical resistance would be the only remedy. Of physical resistance, however, very little would be called into action. The influx of Englishmen from Upper Canada and the United States would soon turn the scale even of numbers in favour of the constitutional minority. Let not these remarks be construed into a threat of rebellion against the mother country. Physical resistance will not be attempted, until the fears and misconceptions of imperial cabinets have rendered the patriots the virtual rulers of Lower Canada. An Englishman cannot be expected conscientiously to feel obedience to Frenchmen as a sacred duty; and I can state positively, that any form of government under rulers of English blood would be preferred, even by the most ardent admirers of monarchical institutions, to a nominal connexion with Britain under the irresponsible despotism of French democrats.

Though the acknowledged weakness of argument in matters of feeling may seem to preclude the ne-

cessity of justifying, on practical grounds, the general determination of the English races, yet I may offer some observations on the comparative advantages of French domination and American connexion.

The admitted "indolence" of the Canadians and the freezing influence of the feudal law, would, under the uncontrolled domination of the patriotic faction, more than neutralise all the social, agricultural and commercial advantages of the merely nominal connexion with the United Kingdom, and would place all the advantages of a real union with the United States as so much clear gain on the safe side of the ledger. I limit myself to the pecuniary advantages of such a union, as being most likely to influence the great majority of any community or any party. The staple commodities of Canada, which, under the existing tariff of the United States, are subject to heavy and, in some cases, to prohibitory duties, would have a free and open market in any state from Maine to Louisiana and from Georgia to Missouri. I subjoin the existing duties on importation into the United States :—

Wheat,	25 cents	per bushel,
"    Flour,	50 "    "	cwt.
Barley,	15	per cent,
Oats,	10 cents	per bushel,
Potatoes.	10 "    "	"    "
Beef,	2 "    "	lb
Bacon,	3 "    "	"    "
Lard,	3 "    "	"    "
Butter,	5 "    "	"    "

Cheese,	9 cents	per lb
Tallow Candles,	5	" " "
Cider,	15	" " gallon,
Beer,	15	" " "
Grain-spirits,	57 to 90	" " "
Maple Sugar,	2½	" " lb
Tobacco, unman'd	15	" " "
Cordage, tarred	4	" " "
"    untarred	5	" " "
Hemp, raw	40 dollars	per ton,
Paper,	17 cents	" lb
Planks,	25	per cent.
Wool,	40	" " & 4cts per lb
Animals, not for breed	15	" "
Leather,	30	" "

The duties on most of the enumerated articles are such as absolutely to exclude the staple commodities of Canada from the nearest and best market in the world.

How many of the enumerated articles does the foreign trade of Canada at present absorb? Hardly any others than wheat, flour and timber. Wheat and flour are exported more frequently at a loss than at a profit; and the exportation of timber depends on the will of Mr. Poulett Thompson, a man deeply interested in the encouragement of the Baltic trade. For almost every one of the enumerated articles there is a ready and profitable sale in the neighbouring states; and, notwithstanding the heavy duty, wheat and flour, during this summer, have been exported in considerable quantities to the states of New York and Vermont. The want of

regular market so far paralyses the energies of Canadian farmers as to circumscribe the production within the limits even of the provincial consumption and thus often to bring the agricultural produce of the neighbouring states into the duty-free Canadian market. What a wonderful impulse would be given to the agriculture and the manufactures of Canada, if they could produce grain, beer, cider, leather, spirits, hemp and wool for millions instead of hundreds of thousands of consumers. The influence of such an impulse would be particularly felt along the borders from Stanstead to Amherstburgh. The last two articles, hemp and wool, might be grown to such an extent, as to counterbalance the certainly approaching failure of the staple commodities, ashes and lumber. In lumber, too, a profitable trade might be opened with New York and other cities. In Canada, at present, timber is a mere weed and rather deteriorates than enhances the marketable value of land; while, in the state of Maine, land is more valuable when wild than when cleared. The following extract from a Maine journal speaks volumes . . . .

“ Among the private sales of land at Bangor last week, was that of a township, owned by Benjamin Brown, Esq. of Vassalborough, for D.10 an acre, of 22,040 acres, amounting to D.220,400. His son Albert G. Brown bought the township a few years ago for less than D.7000. After Mr. Brown sold it at Bangor last week, for ten dollars per acre, it was sold again to an *Albany Company* for D.12 per acre; making it amount to D.264,480, or a greater sum by more than D.100,000 than was asked by Massachusetts, at the time of separation.

for her half of the whole undivided public lands of Maine!"

The advantages of a ready market for wool deserve a fuller notice. Vermont, which produces more wool than any other state in the republic, bears a close resemblance in soil, surface and climate to the Eastern Townships of Lower Canada; and nothing but the prohibitory duty prevents the unlimited production of wool amid the hills and valleys of that most beautiful portion of British America.

I earnestly implore His Majesty's Ministers to reflect that the Eastern Townships contain many Americans, and are separated merely by an artificial boundary from the state of Vermont. His Majesty's Ministers, if they do reflect on these two points, cannot fail to discover that, by an American connexion, these townships would purchase very great advantages without sacrificing many prejudices or encountering many dangers.

I have not urged these pecuniary considerations, as in themselves likely to shake the loyalty of the English population. I have compared American connexion not with subordination to Britain but with subjection to a French faction. I do not believe that the English races prefer republicanism to monarchical institutions; but I do most firmly believe that they prefer the most objectionable form of freedom to the mildest form of slavery.

I have said nothing of the less direct and more problematical advantages of American connexion, having found the direct and certain advantages suf-

ficient for my purpose. But I may now add a few remarks on the former.

According to the unwilling testimony of American witnesses, Montreal, from its geographical position, ought to have commanded the whole of the western trade. A committee of the legislature of the state of New York, the too successful rival of Canada, admits, that

“When the Welland Canal shall be completed, and the St. Lawrence improved as designed, goods may be delivered at Cleveland, (Ohio,) from London, for less than half what it now costs by the way of New York and Erie Canal.”—“*Make the Erie Canal a public highway, and the Canadian route will be preferable by one fourth in point of expense.*”

Judge White, late chief engineer of the New York canals, speaks still more positively.

“It is certain, to my mind, that with such a canal as I have projected, along the St. Lawrence, and the Welland canal in good order, that all the products of the soil from all the upper Lakes can be carried to tide water a *great deal cheaper* by this route *than ever* can be done by the Erie Canal, or any other work.”

He also states, that the Welland canal may be navigated nearly one month earlier than the New York canals.

How happens it, then, that the city of Montreal, one of the oldest cities on the continent of North America, is inferior in population and wealth to many cities of yesterday, such as Pittsburgh and Cincinnati, and has tamely surrendered the western trade to the cities of New York, Philadelphia and Baltimore? These confessedly mortifying results

are owing to the anti-commercial spirit both of the ancient laws and of the modern legislature of Lower Canada. I shall not anticipate the discussion of these admitted grievances of the English population; but I can safely appeal to public opinion for the accuracy of my assertion, that the ancient laws and the modern legislature of Lower Canada have wofully retarded the agricultural and commercial prosperity of the province. These grievances would soon be swept away by the untiring and sometimes unscrupulous energy of the American character.

In the foregoing remarks, I have occasionally spoken of Upper Canada as well as of Lower Canada, for with Lower Canada, the backbone of British America; the empire must lose not only Upper Canada but every one of the Lower Provinces.

Geographical position would decide the fate of Upper Canada; and the Lower Provinces, like Canada, would find commercial advantages sufficient to reconcile them to an inevitable change. It will be a fatal day for the maritime supremacy of Britain, on which a conciliatory cabinet, by surrendering Lower Canada to a French faction, may compel the English population to raise the standard of independence without either the guilt or the danger of rebellion.

The patriots, as I am well aware, have threatened to throw themselves into the arms of the United States. It is very easy to convince any unprejudiced cabinet, that they have more reason, than Britain herself, to dread the union of Canada and

America. The following extract from the Herald of 11th ultimo will sufficiently prove this assertion:—

The American and the Canadian are diametrically opposed to each other. Neither in religion, nor in education, nor in industry is there any thing common to them both. On the delicate and dangerous ground of religion, we do not offer any illustrations. On the subject of education we need only repeat the notorious facts, that very few of the heads of families in the country can either read or write, and that trustees of schools are exempted by a provincial statute from the disagreeable necessity of subscribing their names to their reports. On the head of industry, we must be a little more precise. While the Americans have covered a continent with the smiling monuments of their agricultural industry, the Canadians have literally squeezed their rapidly and regularly growing numbers almost within the original settlements of 1763. We extract the following paragraph from the report of a committee of the Assembly in 1824. "The extreme denseness of the population of Lower Canada, which appears to your Committee to have increased and to continue to increase, in a much higher ratio than that in which the clearings extend into the forest, and the productive powers of the earth are brought forth, rendered it a matter of anxious inquiry, &c."

We extract a few more minute statements from evidence given before the same committee. "There is moreover a large number of young men who would have taken some lands, and who have been disgusted by the high rate of the rent required, and they have thereby been discouraged from taking them. The rent demanded is four dollars for three arpents in front by thirty in depth." The "high rate," if we reckon interest at 6 per cent per annum, would correspond with a price of 3s 8½d Halifax currency

per acre ; and so paltry a barrier, for the prospective dread of a mutation-fine could not have entered into the heads of the "young men," "disgusted" the "young men" more than the most exquisite miseries of cheap "indolence" and starvation. The following scraps of the evidence will show, that the "young men" had not sufficient ingenuity to try their fortunes in another seignior.

The "young men" had too much respect for the decrees of fate. Having been born to be *habitans*, they would not rebel against their destiny by presuming to migrate. On the local patriotism of the "young men," even hunger and cold exerted no influence. There was not a 'banal mill' in the seignior, and "It was necessary to go very far to have our corn ground." There was a scarcity of fuel, and "I have been myself obliged to go three quarters of a league off for my fire wood." The following portion of the evidence speaks volumes for the local patriotism of the "young men," in defiance of all the foregoing disadvantages.

"Q. How do the young people of this parish proceed in order to obtain settlements ?

A. They are retarded ; they wait until the lands shall be conceded ; some of them have even grown old while waiting for lands, but they continue to wait, and, according to what people say, if the unconceded lands were granted many persons would take some of them.

Q. Do the old lands begin to be subdivided ?

A. Some of them do.

Q. Why do they make those subdivisions ?

A. Because they do not find an opportunity of settling their children elsewhere.

Q. What is the effect of those subdivisions ?

A. Some of them are much injured thereby, because when the land is old, and no more new land remains for cultivation, the soil is not sufficiently productive to support two families, and they are both reduced to want."

We are almost ashamed to proceed with the melancholy proof; but we have, perhaps, convinced every reader that, on the head of industry, an American and a Canadian are as different as fire and water.

Can any person, in fine, suppose that the revolutionary spirits of the *Vindicator* sincerely desire the union of Canada and the neighbouring republic. We have repeatedly exposed the empty threats of the *Vindicator* on different grounds, and have never yet drawn a single word from that journal in its own defence on this subject. The somewhat different line of argument, which we have now attempted, will most probably meet with just the same amount of attention. The science of defence has not a place in the tactics of the *Vindicator*. It finds that knowledge and honesty are far less requisite in attacking a strong position than in defending a weak one. The *Vindicator*, moreover, deems it impolitic to let its exclusive students suppose, that any of its own positions can be successfully or even safely assailed.

ANTI-BUREAUCRAT.

Montreal, 1st July, 1835.

ON THE CIVIL LIST.

The public income of Lower Canada is derived from three sources,—the crown-duties, the provincial duties, and the King's casual and territorial revenue.

The crown-duties are those levied under the British Statute of the 14th of Geo. III., or the Imperial Act of the 3d of Geo. IV. The provincial duties are those payable in virtue of any provincial law, whether proceeding immediately from the provincial legislature or rendered permanent, without the consent of that legislature, by the imperial act of the 3d of Geo. IV. The casual and territorial revenue arises from his Majesty's landed property—the Jesuits' Estates, the King's Posts, the Forges of St. Maurice, the King's Wharf, Droit de Quint, Lods et Ventés, Land-Fund and Timber-Fund.

The crown-duties levied under the aforesaid imperial law, commonly called "The Canada Trade Act," and all the provincial duties have always been controlled and dispensed by the provincial legislature; while the crown-duties, imposed by the aforesaid British statute, commonly styled "The Quebec Act," and the whole of the casual and ter-

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territorial revenue were, down to the 23d February, 1831, controlled and dispensed by his Majesty's responsible servants. On the day just mentioned, his Excellency Lord Aylmer communicated to the Assembly a despatch, beginning as follows: "His Majesty, taking into consideration the best mode of contributing to the prosperity and contentment of his faithful subjects of the province of Lower Canada, places at the disposal of the Legislature all his Majesty's interest in those taxes, which are now levied in the province by virtue of different acts of the British Parliament, and which are appropriated by the treasury, under his Majesty's commands, together with all fines and forfeitures levied under the authority of such acts." On 25th February, 1831, the second day after the communication of Lord Goderich's despatch, his Excellency transmitted to the Assembly a kind of declaratory message, stating, what inevitably flowed from the Colonial Secretary's language, that it was "deemed expedient to exempt" "the casual and territorial revenues" "from the operation of the proposed arrangement," but intimating that the reserved revenues would continue to be "applied, not to undue purposes of mere patronage, but to objects which are closely connected with the public interests of the province."

The royal gift of the crown-duties was almost immediately confirmed by an imperial act of the 1st and 2d of the present King.

The ambitious object, which had, for many years, been pursued by the Assembly, was now accom-

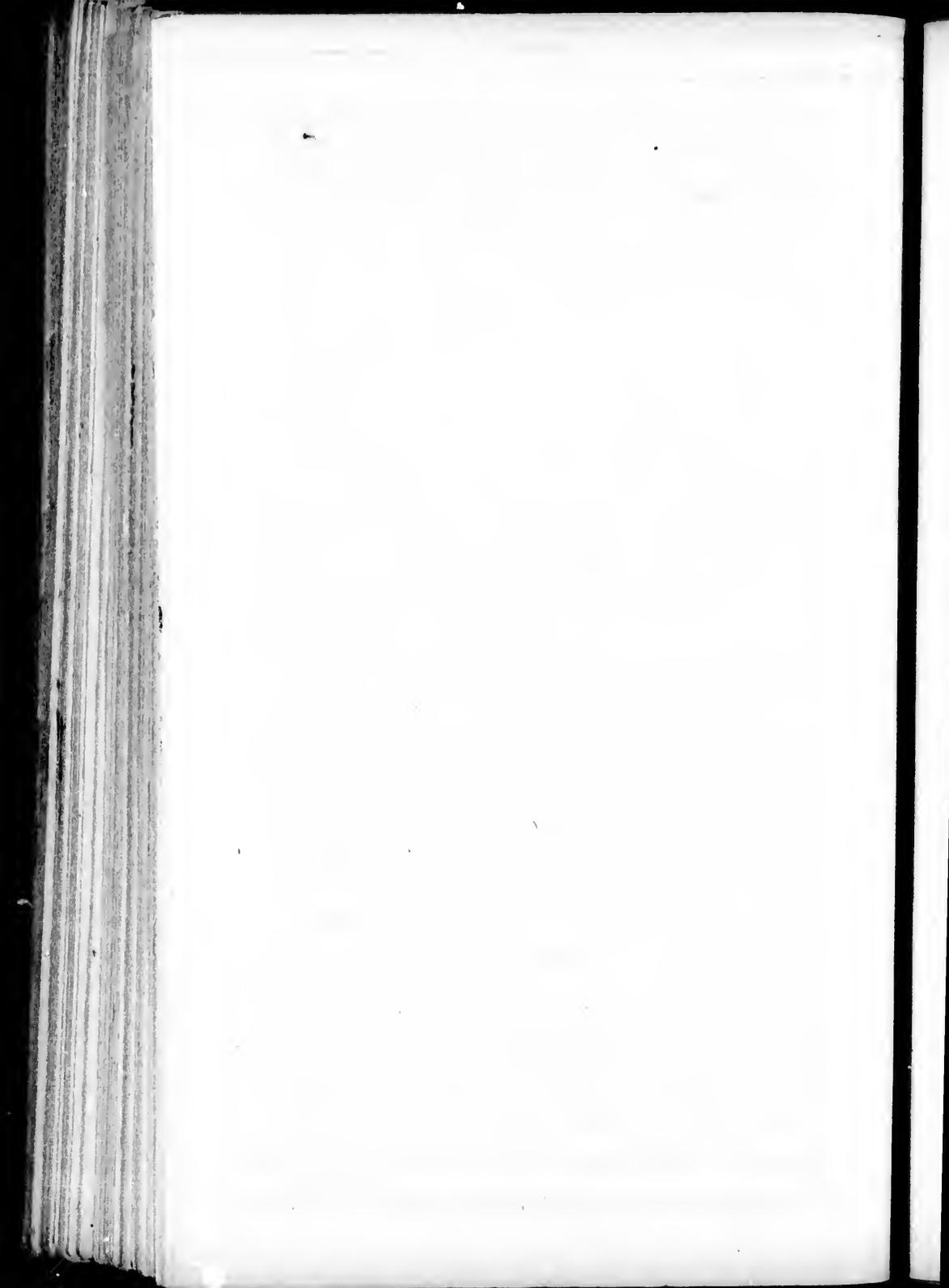
plished. That illustrious body had the executive government at its feet—the whole of the resources of that government being the King's casual and territorial revenue, virtually appropriated to other purposes than the direct support of the civil government, and a permanent grant of five thousand pounds a year, under a provincial act of the 35th of Geo. III.

For the fatal step of surrendering the crown-duties, Lord Goderich is not solely responsible. His lordship acted in obedience to the recommendation of the Canada Committee of 1828, as embodied in its report, that "imperishable monument" of liberal folly. The report says, "Although from the opinion given by the Law Officers of the Crown, your Committee must conclude that the legal right of appropriating the revenues arising from the act of 1774, is vested in the Crown, they are prepared to say that the real interests of the province would be best promoted by placing the receipt and expenditure of the whole public revenue under the superintendence and control of the House of Assembly." That "the real interests of the province" have not been promoted by the surrender of the crown-duties, I need not attempt to prove. Every person knows too well that the sanguine anticipations of the committee have been miserably disappointed—that, through the Assembly's obstinate refusal of a civil list, anarchy has been potentially, if not actually, established on the ruins of regular government. It is, in truth, the personal interest of the public functionaries, that a civil list

should be bought by any concessions, however hostile to sound principles, or fatal to the prosperity of the empire. It is unreasonable to suppose that any individual's patriotism can triumph over the starvation of years. I could cite instances in which the official members of the legislative council sanctioned an obnoxious supply-bill for the sake of their salaries; and for such a dereliction of public duty I must blame them less than the imperial authorities. Such is the state of things, that the very judges of the land, who have not private property, are obliged to borrow money at exorbitant interest and contract debts on very ruinous terms with every good-natured tradesman—their station unhappily precluding them from the cheaper remedies of begging and stealing.

The imperial authorities ought to have foreseen this state of things; but the Duke of Wellington, with characteristic sagacity, seems alone to have anticipated so fatal a result of the conciliatory act of the 1st and 2nd of the present King. I subjoin the closing paragraph of His Grace's protest. "These persons will thus become dependent upon the continued favour of the Legislative Assembly for the reward of their labours and services; the administration within the province of Lower Canada can no longer be deemed independent; and His Majesty's subjects will have justice administered to them by judges, and will be governed by officers situated as above described." But even His Grace seems to reason rather on the general principles of human nature than on the notoriously

unprincipled ambition of the Legislative Assembly of Lower Canada. As the permanent grant of five thousand pounds a year and the crown-duties levied under the act of 1774 had generally, if not always, been inadequate to the support of the civil government and the administration of justice, the crown had necessarily requested the assembly to appropriate out of the provincial duties a sum equal to the annual deficiency; and it was the assembly's systematic resistance to so reasonable a request that gave occasion to the recommendation of the Canada Committee, to the despatch of Lord Goderich, and to the conciliatory statute of the Imperial Parliament. The real motive of that systematic resistance was to make the provincial representatives of the empire the slaves of the assembly. I am aware that the leaders of the assembly professed to claim the disposal of the crown duties as a matter of right on various pretexts. Some of them pretended, that the imperial act of the 18th of Geo. III had transferred the control of the proceeds of the act of 1774 from His Majesty's responsible servants to the provincial legislature. Others maintained that the constitutional act of 1791 had effected the alleged change. Others, with more plausibility and less impudence, claimed for the assembly the right of superintending the expenditure of the whole of the crown-revenues, before it could constitutionally be required to supply any deficiency. The last argument would have been inapplicable, had the government been able to defray all the expenses of the civil government and the ad-



ministration of justice from its own funds. But each of the three claims was merely a flimsy pretext for an insatiable ambition.

What is the remedy of this state of things?— The repeal of the 1st and 2d of William IV., and the appropriation of any possible deficiency out of the general revenues of the province. The former step, by itself, would work but a partial cure, and might still revive the very noisy troubles of Lord Dalhousie's day. A firm government, however, might make that single remedy effectual by retaliating in kind on the Assembly itself. That economical body uniformly outruns the amount permanently appropriated for its expenses; and it would, therefore, be as dependent on the will of the Governor for the supply of one deficiency as the Governor would be on the caprice of the Assembly for the supply of another. In the first place, therefore, the repeal of the present King's conciliatory statute might be practically sufficient.

On the general merits of this important question, I subjoin the admirable observations of "A Citizen," a writer, whom it is a pleasure even for the self-styled patriots to praise and honour.

"An abundant source of error as to all Colonial affairs, is too servile a reference to the proceedings of the government in England, as a model, without bearing in mind the marked difference which exists between the society there and here. We do so in England say many people, and thence infer, *per saltum*, that the same thing ought to be done in this remote colony. Now, there are so many points of difference between the condition of a colony and that of a Metropolitan State, that the legitimate in-

ference is exactly the other way, if it be made *per saltum* at all. They do so in England, it is then probable that the same thing will not answer here.

Let us come somewhat closer to the subject in hand. England is a metropolitan and independent State. Canada is a Colony dependent on England. There are then certain conditions growing out of that relation, the non-existence whereof would imply the destruction of the relation. One of these is, that it shall not be in the power of the colony, so long as she remains a colony, legally to break the link that binds her to the parent state, nor, which is the same proposition in another form, can the metropolitan State put herself or be put into such a position that she cannot maintain her supremacy without violating the law. The officers of the Civil government of the colony are, at once, officers of the Empire and officers of the colony; they require, therefore, to be placed in a degree of independence of the Colonial authorities, which is not requisite or advisable in a metropolitan state. Their dependence should be alone on the metropolitan state, subject, however, to trial and judgement within the colony for any offences there committed by them in the discharge of their public duties. If their salaries depended upon annual votes within the colony, they would cease to be officers of the Empire, and become, exclusively, officers of the colony. Thus the Provincial Legislature comes to have the power of withholding some or all of these salaries, that is, of depriving the metropolitan state of all officers within its colony, indeed of legitimately annihilating supremacy. It may be said that this would never be done. In considering political rights we should measure the power, not weigh future contingencies of facts. Again, supposing the contingency to happen, the parent state is driven to one of three measures; either to pay its public colonial officers out of the general coffers of the empire, or to apply the public revenues of the co-

lony to the purpose, without any law to sanction it, or to pass a law in the Imperial Legislature making the required appropriation.

And as to this contingency never happening, let it be recollected that the colonial legislature pursued a measure of a still more outrageous character when they refused to renew any of the temporary acts imposing duties within the colony, and drove the Imperial Parliament to the necessity of continuing the then and now subsisting duties by passing the act commonly called the Canada Trade Act (3 Geo. IV, c. 119.)

Is it not manifest, that granting an exclusive power to the colonial legislature of appropriating all the sums necessary for the Civil expenditure of the colony gives them absolute control over the officers of the empire and of the colony, makes the latter exclusively officers of the colony, and annihilates potentially, if not actually, the *imperium* of Great Britain over her colony?

The error into which men on this and on the other side of the water have fallen upon this subject, has arisen from their looking at the benefits (not unmixed) which have arisen from the power of the Commons over the public purse; but observe the violence of this check; see the convulsions it produced before it was established.

In a Colony this is a contradiction in terms; a checking power must always be greater than the power checked; it involves nothing less than the absurdity, that a smaller power should counteract a greater one. then besides, it is supported by no reason of expediency if it were possible. There is nothing in a colony to prevent or restrain the violence of popular faction. In independent States, the fear of external violence operates as a check; men feel that, without contributing some portion of their property to the support of armies and navies, the whole might be taken from them by foreign invaders. So too, in old countries, such is the dis-

inction of ranks and inequality of fortune, that the paralysis of the powers of government for one day, would in most of them create vast destruction of life and property: that neither of these conditions obtains in Colonies, is any proof in point of fact wanting? When the Legislature refused to renew temporary acts of subsidy, were there any apprehensions felt in any quarter, or was any deep sensation excited in any breasts, save perhaps, in those of the persons holding office, who saw their means of subsistence jeopardised by this measure? What would be the effect in England or in France, of a refusal on the part of the representative body to continue the subsisting subsidies, and of its being known that the government would at a given period be left naked and without resources? Again, the control in these old countries is expedient, because the persons to be controlled, are the highest administrative officers of the Empire, who may be interested in levying and in spending larger sums of money than are necessary or supportable, and in screening members of their own body from punishment for abuses. But the high administrative officers of the Metropolitan Government never can have an interest in screening a public officer from punishment in the Colonies; all that they could fail in would be the want of knowledge of the delinquency; but this could not exist if the proper tribunal were provided within the Colony for the trial of public delinquents. It is further to be observed that, in the small societies whereof Colonies are composed, men in official power come into more close contact than with their fellow subjects in the large States of Europe. The interests are smaller it is true, but the acrimony is not less. A village society when compared with that of a metropolis, forms the exact counterpart of a colony and a metropolitan state. I apprehend, therefore, that the necessary expenses for the payment of all the officers of government,

should be provided for out of a permanent fund, and their allowances should be fixed and settled to be reduced only, *causa cognita*, upon an address of the two branches of the Legislature, and to be augmented only by an act of the Provincial Legislature."

ANTI-BUREAUCRAT.

July 7, 1835.

### No. III.

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#### ON A COURT OF IMPEACHMENTS.

My last communication attempted to demonstrate the necessity of imperial legislation on the subject of the civil list of Lower Canada; and my quotation from the letters of "A Citizen" clearly shewed, that the provincial legislature was entitled not to a positive control of the colonial officers by holding the public purse, but to a negative check on them by means of a competent tribunal for punishing their delinquencies.

"The official men," says "A Citizen," "who in colonies constitute a peculiar class, having been entirely uncontrolled, had obtained a degree of power, which overshadowed all the other classes of society." The assembly, that it might counteract so overwhelming an amount of unconstitutional influence, offered, in 1810, to defray the whole of the expenses of the civil government—expecting, as afterwards appeared, the exclusive control of all the branches of the public revenue. "The main object," continues "A Citizen," "of the highly patriotic individual, who introduced this measure in 1810, the late Honorable Mr. Justice Bedard, then advocate at the bar of Quebec, was to obtain a check upon the official class."

That the provincial legislature is entitled to check His Majesty's provincial servants, I most cordially admit; but Mr. Bedard's measure, as dearly bought experience has proved, tended as surely to weaken or subvert the supremacy of the empire as to punish the guilt of individual officers. As the cause should always be proportioned to the effect, Mr. Bedard ought rather to have proposed the establishment of a court of impeachments than desired the alteration of the financial arrangements of the Province. I cannot too often repeat, that the former measure is neither more nor less than sufficient, and that the latter, by confounding the innocent with the guilty and by attacking the empire instead of its representatives, transgresses the limits of private justice and public duty.

In the establishment of such a tribunal, the public functionaries, whether civil or judicial, are themselves deeply interested. They are at present the victims of the assembly's slanderous falsehoods, without being permitted to enjoy the common right of the lowest felons,—the right of confronting the hostile witnesses or of offering positive testimony of innocence. Accusation itself is certainly a moral, and perhaps a pecuniary, punishment of a most severe kind.

The law, it is true, says, that a man is to be deemed innocent, till he is proved to be guilty; but public opinion is too apt to say, that an accused person is guilty, till he is proved to be innocent. So certain is the moral punishment of accusation in the absence of a competent tribunal; and the pe-

cunary punishment, though perhaps more remote, is not less certain. Has not the late Attorney General, after having been once declared innocent by Lord Goderich, and subsequently by Mr. Stanley, borne more than the severity of a Turkish fine in attempting to obtain acquittal and redress?—Has not Mr. Justice Kerr, without being tried before any tribunal, been convicted by Mr. Spring Rice of corruption, and degraded from the Bench? In regard to these individuals, I venture to assert, that, even if guilty, they could not have been punished more severely by a court of impeachments.

Having thus demonstrated the necessity of a court of impeachments, I must now say something on the mode of constituting it.

The most obvious mode, if one were to reason from analogy, would be to arm the Legislative Council, as the counterpart of the House of Peers, with the requisite powers; but the analogy loses most of its apparent force from the historical fact, that the judicial powers of the House of Peers were less the result of reason than of usurpation. I object to such a measure, also, on more positive grounds.

It would tend to justify the Assembly's claim to ALL the privileges of the British House of Commons. It would multiply the grounds of contention, already too numerous, between the two houses of the Provincial Legislature, for the Assembly would certainly impeach individuals, whom the Legislative Council would not convict. It would, on the contrary, if the Council should be made

elective, or be swamped by an infusion of radicals, lead to the conviction of every executive officer, for the common leaders of both bodies would systematically persecute as well the innocent as the guilty, merely for being servants of hated England.

Common justice, moreover, requires, that an *ex post facto* law, such as every decision of a court of impeachments must be considered, should be enacted with more than ordinary caution and solemnity, and ratified with at least all the customary sanctions.

To give the governor, as the head of the executive government, his ordinary voice on such an occasion would be liable to many objections; but I think that all the demands of justice and policy might be satisfied by authorising the Executive Council purified and remodelled, to decide on the concurring charges of the two legislative bodies, acting each of its own proper motion.

The existing system in Britain is not liable to my last objection, for the united voices of the two houses virtually imply the sanction of the king; so that any judicial decision of the House of Peers, based on the charges of the House of Commons, is virtually sanctioned by the three branches of the legislature.

ANTI-BUREAUCRAT.

Montreal, 8th July, 1855.

No. IV.

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ON THE INADEQUATE REPRESENTATION OF THE ENGLISH INHABITANTS OF LOWER CANADA, THE FEUDAL TENURE, &c. &c.

The fundamental maxim of democrats is, that the smallest possible majority has an absolute right to domineer over the largest possible minority. I shall apply this maxim to the existing state of Canadian politics, and take Mr. Papineau's address to the electors of the West Ward of Montreal as the genuine confession of a Canadian democrat's faith.

The political principles of Mr. Papineau's party, as a party, are contained in these two passages of the address, "Let those who are so presumptuous as to prefer their own opinions and will to that of the public, learn that whatsoever be their titles to favors from the administration, they have no claim to the confidence of the people"—and "A local, responsible and national government to decide on peace and war, and commercial relations with the stranger—that is what Ireland and British America demand—and this is what, before a very few years, they will be sufficiently strong to take, if others are not sufficiently just to give it to them."

The first passage, as it implies the moral obligation of the minority to surrender "opinions and

will" to the majority, virtually prostrates the British population at the feet of a few unprincipled agitators; the second, as it demands not merely an independent legislature, but a purely provincial executive, tramples under foot the British government and dismembers the British empire.

It is presumptuous, says Mr. Papineau, in the few to prefer their own "opinions and will" to the opinions and will of the many. We are not merely to surrender our "will" so as to produce unity of action, but even to surrender our "opinions" so as to produce unanimity of thought. The man who proclaims this extravagant modification of passive obedience, styles himself, and (such is the self-delusion of a weak mind,) perhaps imagines himself, a LIBERAL. Words, which are the servants of wise men, are the masters of fools.

Let me compare this opinion of the liberals with their fundamental tenet, that a man should be governed only by laws of his own manufacture. Can any two things be more inconsistent with each other? The disciple of a liberal is theoretically taught to believe that he shall be in every respect his own master. Soon, however, he practically discovers that, if he be in a minority of forty nine, he is the helpless slave of a majority of fifty, and that, if the two bodies be distinct and irreconcilable, he can vindicate his freedom only by apostasy or by physical force. In Poland the fundamental principle of the liberals was carried fully into effect; and Poland was blotted from the map of Europe. In the republics of ancient Greece

and modern Italy, the will of the majority was directly the law of the land; and the republics of ancient Greece and modern Italy were merely the temporary strongholds of alternately victorious factions.

Either of the two principles, taken by itself, is subversive of civil liberty and national independence; and in any government, which professes at once to be just and practically efficient, both principles must be thoroughly blended and accurately poised. The error of the liberals is, that they draw practical conclusions from a metaphysical view, as the case may require, of either the one or the other. Two principles, so different from each other, cannot both be true in the abstract; so that if the liberals adopt both as abstractly true, they are grossly inconsistent: and, if they wilfully adopt contradictory tenets from practical necessity, they come over to the opinion of every rational statesman, from Moses down to Montesquieu, that general principles must be modified by an infinite variety of circumstances.

The unavoidable predominance of a majority over a minority, if all legislative and executive powers were vested in the people or in a single popular assembly, would be to make the governors physically stronger, and, in all probability, morally weaker than the governed, and to establish Mr. Papineau's execrable doctrine of passive obedience. The British Constitution, on the contrary, besides checking popular impulses by two hereditary branches of the legislature, prevents, by the nicest

adjustment of dissimilar constituencies, the majority of the people from returning the majority of representatives.

In Lower Canada, in particular, the uncontrolled domination of the majority would be fatal to the welfare of the proscribed and calumniated minority. This result springs from the peculiar character of the population of Lower Canada.

That the population is heterogeneous, I need not inform the compatriots of the immortal Wolfe; that it is generally uneducated, is obvious from the notorious facts, that trustees of schools are specially permitted by statute to affix their crosses to their scholastic reports, and that, within the last two years, in each of two Grand Juries of the Court of King's Bench for the district of Montreal, selected under a provincial law from among the wealthiest inhabitants of the rural parishes, there was found only one person competent to write his own name.

Of the heterogeneous population, the inhabitants of British origin form one-fourth, and the French Canadians the remaining three-fourths.

For fifty years after the cession of the province, the two races, if they did not harmonise in social intercourse, were in some degree blended on political occasions, and, but for the haughty domination of an official faction, which indiscriminately oppressed Britons and Canadians, and but for the selfish ambition of a few agitators, who, after humbling the common enemy, transferred their hatred from the British executive to the British name, they might ere now have forgotten or neglected national distinctions.

About twenty-five years ago commenced a struggle between a knot of hereditary placemen and independent individuals of either origin—a struggle not for power but for liberty—a struggle, which ended, as the battles of freedom generally do end, in the exposure of official corruption, and in the prostration of usurped power.

Flushed with success, and unfettered by honesty or policy, the Canadian agitators cruelly deceived their uneducated constituents into a belief, that the British inhabitants of the province, and Britons generally, were the bitter and persevering enemies of Canadians; and thus divided the provincial population into two distinct and irreconcilable masses, the French majority and the British minority.

To perpetuate this numerical supremacy, the patriots have systematically attempted to deter Britons from settling in Lower Canada.

They have taxed British emigrants, and British emigrants only, in defiance of constitutional principles, in defiance of national gratitude, in defiance of common sense. They have met with silent contempt his Excellency's repeated and urgent requests—that they would establish an efficient quarantine for the benefit at once of the emigrant and of the province. They have refused aid for the improvement of our harbour, unless the Governor should sacrifice the present faithful, zealous and intelligent Commissioners, and virtually relinquish to the Assembly the nomination of others. They have absurdly stigmatised, as a mischievous monopoly, a Land Company, which holds only a com-

paratively small portion of the waste lands of the Crown, and whose capital can only yield a return by being expended on the improvement of the province. They have recently strained every nerve to ruin the banks of the colony, and thus to strike, with fatal aim, the very vitals of commerce. They cherish, with obstinate tenacity, the most petty vexations of the feudal tenure, not because such vexations are profitable to any one, but because they possess the recommendation of being hateful to Britons.

Such is the Seignior's right of fishery and chace; such is his power of calling for the tithes of every vassal. The patriots may, on more intelligible grounds, defend the mutation-fine and the seignior's exclusive privilege of grinding the grain of the seignior. It is not to be supposed, that the seigniors will voluntarily relinquish lucrative claims without being adequately remunerated by law; but, in the course of forty-two years of industrious legislation, one might reasonably have expected some attempt to remove or ameliorate so absurd, so galling, so impolitic burdens. To such of my readers, as may happily be unacquainted with the feudal system, I offer a brief detail of its nature and its effects. A vassal may have a mill at his door; but, if it be not his lord's, he may be obliged to carry his wheat several leagues to the legitimate machinery of his feudal master. Throughout the seigniories of Lower Canada, within the limits of which are unfortunately comprised the cities of Montreal and Quebec, the feudal lord is legally entitled to the

twelfth part of the price of any real property that may be sold within his jurisdiction. The evils that spring directly from the mutation fine, are threefold. It prevents the free transfer of property; it gives the seignior an interest in driving an embarrassed vassal to a sale; and being levied on all improvements, it is virtually a tax on industry, and seriously diminishes the demand for manual labour and mechanical skill. In fine, it checks the growth of cities, thus crippling at once commerce and agriculture; it carries the emigrant, whether labourer or mechanic, to a more open market; and, by damping the enterprize of capitalists, depresses below the just level the value of real property. From feudal prejudices our antagonists, also, oppose the registration of real property, and thus strive to perpetuate a host of practical grievances of an intolerable character. . . . secret and general mortgages, forced sales from the difficulty of borrowing money, interminable litigation, and the expense, if not the impossibility, of procuring an unexceptionable title. This last remark tends to explain the more intelligible grounds of attachment to the feudal law. The seignior's motives are obvious and natural; and the legal circumstances, to which I have just alluded, sufficiently account for the feudal predilections of lawyers and notaries of French extraction, who, as they form a majority of the educated laymen, have unbounded influence as well in the country as in the Assembly.

Such are a few of the means adopted by the patriots to exclude Englishmen from this fair

and fertile province, with the view of maintaining their relative numbers, and of ultimately establishing a French republic.

Wherever the population is mixed in the general ratio of three Canadians to one Briton, the Briton is virtually the victim of civil disabilities and political degradation; and were all the Britons so distributed into masses as to command majorities in the greatest possible number of constituencies, their representatives would still be a minority, rendered powerless and virtually annihilated by the unbroken and unbending majority.

Not contented with a resistless majority, the liberals strain every nerve to increase it by proscribing the ablest members of the late Assembly and by depriving the province of the public services of its most distinguished citizens. On a similar principle they long refused to divide the counties on the southern side of the St. Lawrence, and to enable the British inhabitants of the Eastern Townships to elect their own representatives.

When they did yield to the just demands of virtually disfranchised Britons, they divided the townships into counties according to the actual population, without making any provision for its future growth; so that were the respective sections of the province peopled in proportion to their productive powers, a British majority of constituents would still return a paltry minority of representatives. To deprive us even of our natural weight, our antagonists have disfranchised co-tenants and co-proprietors, as being generally Britons, and conferred

a vote on every co-heir, as being generally a Canadian.

Under any possible circumstances, therefore, the representative principle.....the best legacy of our fathers.....confers, so far as it extends, absolute power on our avowed and implacable enemies, and degrades its natural heirs into the political vassals of adopted aliens.

While our opponents openly profess to separate their interests from ours, we must not, we cannot, we will not be satisfied with any thing less than an equal share of legislative influence. The vacillating and timid policy of successive Colonial Secretaries shakes our confidence in the *veto* of the Executive and points to an intermediate branch of the Legislature as our only safeguard. But this intermediate branch must be perfectly independent. While identified with the Executive, the Legislative Council was a superfluous curse: if identified with the Assembly, it would offer to us the melancholy alternative of submitting to the factious leaders of a petty republic, or of vindicating our hereditary freedom by an appeal to arms. Our antagonists, while checked by an independent Council, have not any unqualified power of legislation; were that check removed, they would wield a legal despotism. Their present influence, pernicious and fatal as it has been, would be to their future power as nothing to infinity. Their acknowledged and unavoidable majority in the Assembly, to which Lord Glenelg may rashly or timidly yield, is the strongest argument in favour of an independent

Council—convincing, as it does, our utter helplessness in the stronghold of our enemies.

Feeling that our own interests and those of our Canadian brethren are identical, we disclaim any and every desire of exclusive privileges or exclusive power—we wish not to oppress others, but to defend ourselves. So long as our opponents control the decisions of the Assembly, an independent Council, however composed, cannot do any thing injurious to the French majority; so long as independent Britons control the decisions of the Council, the Assembly, however composed, cannot do any thing injurious to the British minority—while the two legislative bodies may cordially co-operate in all measures of general utility.

It is, moreover, unfortunately true, that elective bodies, unless overawed into moderation by public opinion, are peculiarly apt to transgress the legitimate limits of their delegated authority, and to throw themselves on the physical force of superior numbers. That public opinion is unknown among the deluded followers of the revolutionary agitators of Lower Canada, I need not attempt to prove. Where a grand juror can seldom read or write, what must be the intellectual state of a voter, whose pecuniary qualification is about a fifth of that of a grand juror?

What, for instance, has been the conduct of the elective Assembly?

It has more than once appropriated, by its own resolution, large sums to “defray the expenses” of its own agent in London. So disproportionate to

the expenses of the agent, and to the possible value of any agent's services, have been those grants, as to excite a reasonable suspicion that the agent's expenses and the agent himself were convenient pretexts for the secret misapplication of the public money. The original grant of £1,000 a year was gradually increased to £1,700. The same body condemned, without a hearing, the Honourable James Stuart, late Attorney General of this province—a proceeding, which, to do the Assembly justice, was subsequently thrown into the shade by the still more flagrant partiality of Viscount Goderich. The same body repeatedly expelled from successive parliaments Mr. Christie, member of Assembly for the county of Gaspé, in defiance of law and equity, in defiance of the indignation of the disfranchised electors and of the remonstrances of the Colonial Secretary. The same body expelled the Honourable Dominique Mondelet, member for the county of Montreal, by a forced interpretation of an illegal resolution; and, as if to display at once inconsistency and iniquity, permitted Mr. Panet, who was similarly circumstanced, to retain his seat—the difference of parliamentary fate having probably arisen from the difference of parliamentary opinion. The same body, having instituted an inquiry into the melancholy riots of 21st May, 1832, prejudged the question before the examination of a single witness, and in violation as well of its own solemn pledge as of common justice, published the evidence for the prosecution, without even having heard the evi-

dence for the defence. The same body disfranchised, for two years, the West Ward of Montreal—thus trampling under foot the dearest rights of freemen. Thus has that elective body, regardless of the provisions of the constitutional act, which established the Assembly as one of three co-ordinate branches of the Legislature, arrogated to its own resolutions the authority of laws—usurping the powers of the other branches, and violating the sound parliamentary rule of three readings of any important proposition. But this is not all. The Assembly, by adopting the system of temporary laws—a system, which, were it less pernicious, would be supremely ludicrous—so far has the legal security of the colony at its mercy, and may, by a steady perseverance in factious tyranny, gradually render Lower Canada the prey of lawless anarchy. The adventitious power, which this system confers on any one branch of the Legislature, has been more than once abused by the Assembly, and is more than ever likely to be abused again. As the Assembly has thus acquired, to a certain extent, absolute power over the law, so has it endeavoured, by the factious refusal of a civil list, to drag the provincial government at the glowing wheels of its revolutionary chariot. It has avowedly attempted to make the imperial servants and the provincial judges—the representatives of the Mother Country, and the interpreters of our laws—the puppets of its reckless leader. The same body has almost universally impeded the exercise of his Majesty's prerogative of selecting executive functionaries by in-

troducing the absurd and uncongenial system of pecuniary qualifications ; while, so far from imposing any such restraint on its uneducated constituents, it has conferred a stipend on the objects, however poor or ignorant or unprincipled, of their unfettered choice.

Our opponents, while they glory in the hatred of the British name, and in the oppression of British interests, have, by intrigue and misrepresentation, commanded the sympathies of many a Briton both in Europe and America ; while relying on the majesty of the empire, and on the memory of past achievements, the Britons have long slumbered, and at last awaked to see the tricoloured banner darkening the Heights of Abraham. Thus has it ever been. In the wars of England and France, England has gained the most brilliant victories, and France has reaped the most solid advantages. In the boasted days of our Edwards and our Henrys, England achieved the miracles of Cressy, Poitiers and Azincour ; while France—beaten, discomfited and disgraced France—wrested from the victorious islanders provinces extending from the mouth of the Seine to the Pyrenees, and gained, in the extension and consolidation of her territory, advantages far more than equivalent to the glories of three empty triumphs. To descend to more modern times, the hard-won fields of Salamanca and Vittoria are virtually part of a French province ; and the plains of Waterloo, which made Britain a house of blended mourning and exultation, are prostituted as the appanage of a daughter of the king of France.

The Canadians, in like manner, have, by persevering intrigues, conquered their conquerors, and in the short space of seventy-five years have risen from a state of feudal degradation to be the legislative oppressors of their open and generous deliverers.

ANTI-BUREAUCRAT.

July 9, 1835.

FEUDAL TENURE AS IT AFFECTS MONTREAL—REGISTER  
OFFICES—GENERAL MORTGAGES.

In my previous articles, I have, cursorily, alluded more than once to the generally pernicious effects of the feudal tenure; and I now proceed to redeem my promise of giving a more full discussion of that most important of all the questions agitated in the province.

The following extract from the editorial columns of this morning's Herald leaves nothing to be said on the mischievous oppression of the feudal tenure, properly so called.

“ That the most valuable and commercial part of Lower Canada, comprehending a city whose situation and natural advantages for trade, if left unobstructed, would be second to none in North America, should be fettered in its progress and injured in its prosperity, not merely by the burthens of a feudal tenure, but also by those of a tenure in mortmain, is an evil of the greatest magnitude not only directly to the city and island itself, but indirectly to other Provinces and parts of His Majesty's Dominions, which cannot be materially connected in intercourse with Montreal, without also participating in the benefit of its prosperity or suffering by the checks to its advancement.

To allow the exercise of seigniorial rights over a city destined by its situation, to become a great commercial emporium, is not merely to give a fatal wound to the progress of the city itself, but it is weakly, impolitically and unjustly to sacrifice the interests of trade and of future generations, throughout a large portion of both provinces, to which the extended commerce of Montreal under happier auspices might be capable of giving prosperity and comfort.

The *lods et ventes* or mutation-fines, amounting by law to one twelfth of the price upon every sale, constitute one of the greatest grievances, but by no means the only one arising from the present tenure, and which could not be removed while the Seigniorry should continue to be held in mortmain.

Supposing a manufactory or building, worth £12,000, to be erected upon a lot not worth £100, if the proprietor has occasion to sell and could even find a purchaser willing to give in all the sum paid by the proprietor for the erection of the edifice, the proprietor is nevertheless liable to lose £1000, as a *punishment* for having had the industry, the means and the enterprise to build; because the claim of the Seigniors is not the twelfth of the original value of the ground merely but the twelfth of the amount of the money and labor of others laid out upon the building also.

This under our feudal system becomes a privileged debt to the Seigniors who have not expended a farthing—but this is not all—the next and the next vendor *ad infinitum* must each in turn lose to

the Seigniors a twelfth of the purchase money.—So that if by inevitable misfortunes the buildings should change hands a certain number of times, the Seigniors will benefit by these evils to the amount of the £12,000, the full cost of the edifice to which they have contributed nothing, being one hundred and twenty times the original value of the lot. Instances are known where the claim for *lods et ventes*, deferred until the occurrence of several sales, has swept away at once the whole price for which the lot, buildings and all have been sold.

But the Seigniors' claim does not even end here, for when they have obtained, for once the £12,000 of the money of others, being one hundred and twenty times the original value of the lot in the case supposed, their claims proceed again in the same manner without end.

It has been asserted and the assertion seems not to be void of foundation that the entire value of all the real Estate and Buildings in the city, (the property of and erected at the cost of many thousands of individuals) must every forty years or less be paid into the hands of the Seigniors; and this is exclusive of the rents of the Seigniorv. Thus the value of all the real estate, and buildings existing forty years ago when the buildings were much fewer and the value of the real estate far less than at present, has certainly within the last forty years passed into their hands: in like manner the number of buildings and value of real estate will of necessity be so much augmented during the next forty years, that at the end of that period it is likely that

the present value of all the real estate and buildings will also have passed into their hands should the feudal tenure be allowed by sufferance still to retain its possession. It is to be remarked that this enormous contribution, this appalling and blighting exaction, is principally raised from improvements of which Englishmen and English commerce are the creators and cause. For the prosperity of a commercial place, it is important that no impediments be thrown in the way of improvements, nor any unnecessary obstacles be opposed to the transfer of real, any more than of personal, estate. But such burthens and obstructions as those above mentioned and other that might be stated, which prevent the natural growth of a most promising and advantageously situated commercial city, are most truly lamentable and might perhaps be justly styled iniquitous; and when it is considered that all these burthens go to the support of institutions wherein not even an English education is given and whose claim rests not upon law, but upon the injudicious sufferance of the Home Government, and are half the time derived from buildings erected with British capital, and are also half the time taken from the miserable dividend, which the English creditor, whose money has been converted into stone and mortar, ought to receive from his Bankrupt debtor in Canada, it renders the injustice greater and causes the evil to be more sensibly felt.

The right of *lods et ventes* constitutes a tax. Now it has been always held that there are but few reasons except the support of government which can

justify taxes. But taxes even for the support of government are seldom advisable, if they *materially* and directly operate to diminish industry and check the improvement of real estate.

But this is the operation of *lods et ventes* particularly in a commercial town, and these injurious and oppressive taxes are not levied for the support of government, but of institutions of foreign character and origin and are employed in bestowing a foreign education, perpetuating distinctions productive of hostile dispositions or appropriated to other purposes equally adverse to the interests and feelings of the enlightened English, Irish, and commercial portion of the community, from whom they are already chiefly drawn and upon whom they will hereafter almost wholly fall, since it cannot but be evident that English commerce and English enterprise must be the sources whence multiplied improvements and frequent transfers will be continually flowing.

Mutation-fines or *lods et ventes* must be every where an evil—but the evil is far less in the country than in a town; for in the country the value of the land itself forms the principal part of the amount, but in town it is less the land than the edifices that constitute the value of the property.

Were the land held here under the free soccage-tenure, it would remove the chief obstacles to freedom of enterprise in attempting the highest improvements, because in such a case, the time, labor and money of the proprietor would be laid out for himself and not for others.

Would it be too much to expect that Government should do something in this Seigniorship towards removing the double evils of mortmain and of feudal burthens; first for the purpose of giving more scope to commercial activity and general improvement as well as for the advantage of our Sister Province of Upper Canada which must be deeply interested in the advancement of Montreal, and secondly in order to relieve the inhabitants from the payment of a tribute for purposes which many of them may consider as far as they are concerned to be at once impolitic and unjust.

That those who have been in the habit of taking to themselves large portions of the labor and capital of others without any consideration, should find fault with the establishment of a more equitable system, is probably to be expected, for what urgent measure of public right or public improvement was ever without its detractors or opponents? Continued complaints and opposition were made even against every measure for the suppression of the slave trade.

But could the Government long expect to escape complaints even if it should remain quiescent in this matter, as heretofore? It is presumed not, because those who suffer from what they consider an unjust and illegal subjection to mortmain and other disadvantages (and the number of these sufferers is continually increasing,) will not always be likely to lament in silence, if no course be taken by which relief can be hoped for, upon any terms.

That a Government in any country where much

remains to be effected in order to place the interests of the community and of the empire on a proper foundation, should be able entirely to prevent the clamors of the interested or the factious, it would be idle to imagine—and seeing that these cannot be prevented, it would seem that the only imputations to be averted would be those which should justly accuse the Government of supineness in asserting its own rights or indifference to objects of permanent and general good lest some partial and temporary complaints should be excited—complaints which must of necessity be powerless against the continued voice of sober reason and the sense of extensive and lasting benefit.”

To this denunciation of the feudal tenure, properly so called, I shall add a few remarks on the collateral subject of insecurity of title.

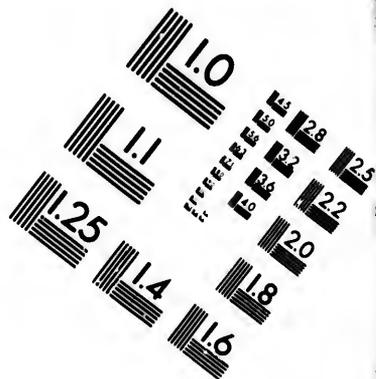
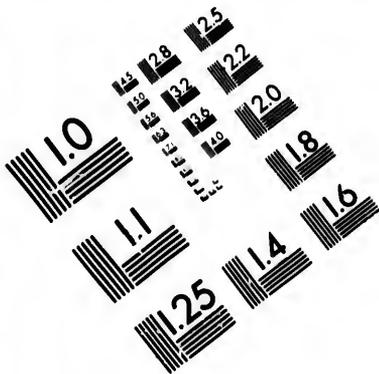
The self-styled reformers, on the most frivolous pretexts, gratify their hatred of the “foreigners” by opposing the establishment of registers of real property in the seigniories of Lower Canada; while the system of GENERAL MORTGAGES aggravates to a tenfold degree the inevitable evils of SECRET obligations.

If a man take to himself a wife with or without a special contract, he grants a mortgage to the amount of the lady’s dower over all the real property, which he either does then or may thereafter possess. But this is a comparatively feeble illustration, for a man can hardly take to himself a wife without a tolerably general notoriety of the fact. The descendants of a deceased wife inherit all her claims, and may

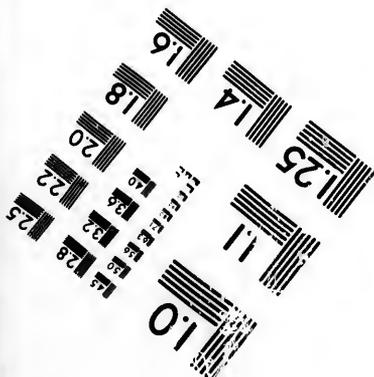
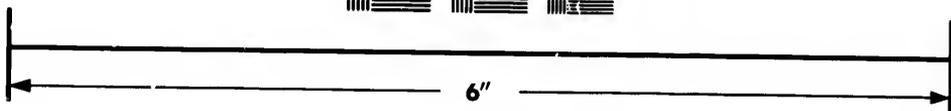
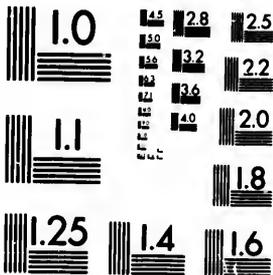
possibly exist abroad in the third or fourth generation without the knowledge or suspicion of a single inhabitant of the province. Some years ago, a menial servant of the King of Bavaria made good a claim, forty years old, on real property situated in the town of Montreal. This claim of dower is neither dissipated nor weakened by time. It is, in truth, practically strengthened by the lapse of years, for every year necessarily weakens the evidence, by which the claim might be defeated. Some years ago, a large claim for dower was demanded from the ostensible owner of a certain tenement in the city of Montreal. The claim, being indelible, was, *per se*, as valid as on the day of its creation; and the owner could ward off the claim only by proving that, so far as the law required, the claim had been satisfied. After a singularly patient investigation of many bushels of private papers, the ostensible owner discovered, that, when the property had been sold at Sheriff's sale a few years after the date of the claim, the dower had been rendered null and void by the existence of previous mortgages to the full amount of the proceeds of sale. In this instance, the lapse of time had negatively strengthened the long dormant claim by weakening the adversary's evidence.

Mortgages are created in various other ways, than by marriage. When a rustic proprietor owes money to his grocer or his baker or his butcher or his haberdasher, he is generally compelled to pay him by a notarial obligation on all his real property, actual or contingent; and he sometimes grants a si-





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milar mortgage in favour of some pettifogging scoundrel of a French lawyer in consideration of the contingent costs of a newly begun lawsuit. Every judgment of court, also, operates as a mortgage. But the most cruelly oppressive of all mortgages is the seignior's *lods et ventes*. I do not speak of the *lods et ventes* merely as a fine. On that head, my extract from the editorial columns of yesterday's Herald is conclusive. I speak of the accumulations of that fine advisedly permitted by the seignior, because they form a mortgage privileged beyond even all previous mortgages. What, it may be asked, is the seignior's motive for permitting such accumulations? The thirst for another mutation-fine, or the hope of buying in the vassal's property at a forced sale, on easy terms, is the seignior's intelligible, if not amiable, motive. Not one mortgage in a hundred takes its rise from the lending of money; so that the obstacles, which the insecurity of titles throws in the way of borrowing, hardly tend, in any degree, to diminish the number of mortgages.

Where mortgages spring from such a variety of circumstances, and are created in such a variety of ways, their *secrecy*, even if they were special, would be sufficiently pernicious; but their *generality* engenders evils absolutely intolerable and altogether incredible. Through that *generality* of mortgages, a man cannot hold real property for an hour without vitiating its title to the amount of all his previously granted notarial obligations. In this way, a man may pollute the title even of real property, that virtually never belonged to him. He may

have bought a farm or a house on credit, may have been obliged by want of funds to restore it to the seller and may thus have burdened it with a hundred previously contracted debts of indefinite amount. To make this more clear, I suppose the following case. A sells a farm to B and receives in payment B's notarial obligation; but being unable to exact from B either principal or interest, he receives back the farm in exchange for B's notarial obligation. B had, previously to the purchase, granted to C a general mortgage to any given amount. While B holds the property, C's claim is neutralised by A's claim; but no sooner is A's claim extinguished by the transfer of the farm from B to A, than C, in virtue of B's general mortgage, seizes the farm as having once belonged to B. Thus may the collusion of B and C deprive A of his farm.

B may grant a notarial obligation in C's favour to any given amount with or without any valuable consideration. Soon after, B buys from A a farm worth about that amount, and manages, as insinuating ruffians know how, to become proprietor in the eye of the world and the law, without paying a single farthing of the price—A, of course, holding his notarial obligation for the covenanted price. B, as a matter of course, pays neither principal nor interest, that he may induce A to take back the farm itself in lieu of payment. A may possibly, by proving the circumstances in court at considerable trouble and expense, recover his farm, exempted from the mutation-fines on both transfers

and as clear of mortgages as it was when he nominally sold it. To avoid trouble and expense, however, a seller is often induced to take back his property by private contract; and if A do so, he is immediately robbed of his property in virtue of C's claim on any piece of real property, that may have belonged to B for an hour subsequently to the date of the collusive obligation. In this way a dishonest notary, particularly if leagued with a dishonest lawyer, may rob every second *habitant* of his farm. Such a pair could always afford to offer a man his own price.

Such is the law that the self-styled reformers support with desperate resolution.

The self-styled reformers, instead of providing the natural and simple remedy of such grievances by the introduction of public registers, have introduced an act for the ratification of titles.

That act is ruinously expensive, retrospectively imperfect and prospectively worthless.

It is ruinously expensive, for the cost even of the unsatisfactory ratification costs about ten pounds currency—about thirty or forty times as much as the ordinary cost of registration, and equal in amount on small properties to a second mutation-fine for the benefit of the lawyers and the officers of court.

It is retrospectively imperfect, for it does not relieve the property from a living wife's or a minor's claim for dower. A few years ago, a citizen of Montreal purchased, at Sheriff's sale, a house, belonging to a man who was then living with his

wife and their daughter. In process of time, the father and the mother died; and the daughter legally defrauded the purchaser of the amount of her mamma's dower with all the costs of suit. Such is the law, that our self-styled reformers support with desperate resolution. At the date of the purchase, I believe that the act of ratification did not exist; but if it had existed, it could not have protected the purchaser against the premeditated fraud.

It is prospectively worthless; for the property, as soon as it passes into the hands of the purchaser under a comparatively pure title, is potentially polluted by that purchaser's previous notarial obligations.

So slovenly and worthless an act places the self-styled reformers morally in a worse position than that in which they previously stood. It confesses the evil; but, so far from removing that evil, it only tempts purchasers to squander fees in the Court of King's Bench—fees, which, like the mutation-fine, must be renewed on every successive sale.

ANTI-BUREAUCRAT.

24th July, 1835.

No. VI.

RECAPITULATION — CONCLUSION.

No. I. attempted to shew that the French Canadians would gain less and lose more, than the inhabitants of English origin, by the revolt of Lower Canada from Great Britain; and it, of course, inferred that the imperial authorities might more safely neglect the theoretical complaints of the former than the practical grievances of the latter. It deprecated the immediate and prospective tendency of Lord Aylmer's recal.

No. II. discussed the long agitated question of the civil list. It enumerated the various sources of public revenue, and endeavoured to prove, that practical necessity and sound principles combined to demand from the imperial parliament a permanent appropriation of a sufficient portion of the provincial revenue for the support of the provincial government. It shewed that such appropriation might be made, without any violation of the constitutional act, by repealing the imperial statute of 1st and 2d of the present king and thereby replacing the crown-duties under the control of the Commissioners of the Treasury for the support of the civil and judicial establishments of the colony. It closed with an admirable extract from the letters of "A Citizen."

No. III. advocated the establishment of a court of impeachments, that the guilty servants of the public might be condemned ; and that the innocent might be solemnly acquitted of the slanderous charges of the factious majority of the Assembly. It offered several strong reasons against the erection of the legislative council into a judicial tribunal.

No. IV. proved, that the English inhabitants of Lower Canada are as powerless in the house of assembly, as if they were disfranchised ; and that, but for their virtual representation in the legislative council, they would be the legitimate slaves of the unbroken and unbending majority. It also proved that the self-styled reformers are the conservators of all practical abuses and of all antiquated laws, and tended to convince every intelligent reader, that their unbalanced despotism would not only subject the English population to legal tyranny, but would also fatally retard the prosperity of Lower Canada and consequently of all British America.

No. V. offered a special discussion of the most grievous of all the abuses mentioned generally in No. IV.—the feudal tenure, general mortgages and the want of registers of real property. To make the oppressive influence of the feudal tenure more obvious, it selected the city of Montreal as an individual victim, whose advantageous situation for commerce is confessedly neutralised by the blighting shade of feudal institutions to the direct injury of Lower Canada and to the indirect detriment of all countries trading with Lower Canada.

It, moreover, showed that the want of public re-

gisters and the system of general mortgages combine to weaken the validity of every title in the seigniories and to place the greater part of the real property of the French Canadians at the mercy of dishonest notaries, pettifogging lawyers and other designing knaves.

To what I have already written, I cannot add much without being guilty of repetition; and I shall close the pamphlet with a brief exposition of my motives for devoting so large a share of my time and attention to a voluntary task.

My peculiar occupation, which I have mentioned in the preface, will doubtless be a pretext for stigmatizing me as a tool, receiving opinions from others, and as a hireling, deserving but little credit. The True Sun will repeat its groundless assertion of 29th May, that "The secret of the Herald's hostility to Canada is easily explained. It is under the thumb of the Land Company jobbers, whom the Canadians oppose, and whose charter the House of Assembly will never sanction. Thus the Herald is an interested, and, *pro tanto*, an incompetent witness." That the Herald is the only independent journal in Montreal, I can assert here without fear of contradiction, or even of doubt; and I solemnly declare, that, with the exception of a few facts in regard to the proceedings of the Legislative Council, communicated at my own request by two members of that body, I have not been influenced in the composition of these articles by any one of the individuals, so elegantly designated by the True Sun as "Land Company jobbers." So far from

having expected any remuneration in the shape either of fame or of profit, I have kept my secret at the hazard of seeing my anonymous labours appropriated, as they once already were, by a general plunderer, and I do not at this moment know whether the expense of printing for gratuitous distribution two thousand copies of a pamphlet of two hundred pages may not fall exclusively on myself. My object has been, not to promote the views of individuals but to maintain and illustrate sound principles. To sound principles every honest man must be attached ; but of those individuals, who style themselves constitutionalists, there are not very many, whom I have reason either to love or to admire.

I have merely to add, that, in the matter of style, I have aimed throughout at nothing higher than simplicity, perspicuity and precision.

ANTI-BUREAUCRAT.

25th July, 1835.

## APPENDIX, NO. I.

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The recall of Lord Aylmer has opened prospects to the Canadas of the most mournful kind ; mournful (if that recall is followed by concession,) to the inhabitants of the Townships, and others the truly English in politics, mournful to the French *habitant*, the vegetable of the Seigniorie, who has no political opinion, and mournful to the republican Anti-British faction of the House of Assembly. We say the prospects are mournful to all, because we are members of the same human family ; and if concessions are granted, if the claims of the British inhabitants of a British province, if the claims of those who have been born British subjects, or are the descendants of British subjects, whose whole pride has been to look to Britain as the land of their common birth, whose every thought has been formed under the British constitution, and whose every effort has been to preserve that constitution, if the claims of such are sacrificed to quiet the treasonable ravings of a British-hating faction, to that faction we say the prospects are truly deplorable. These are not the times for men to lull themselves by hopes ; in the emphatic language of Sir Robert Peel, ' there is danger to the empire,' and it seems that Lower Canada has been selected as the fitting place for its first developement. The liberties of the Townships have been openly threatened, the design of invading them, and, if possible, of crushing them is fast maturing. Let the Townships be on their guard ; let them be calm, but let them be prepared. The Townships are prepared. They will resist, by all feasible means, the plan of

French supremacy by an elective Legislative Council; they will resist to the uttermost the imposition of the abominable feudal tenure of the Seignior.

In recalling Lord Aylmer the Melbourne ministries have acted most rashly. For what wrong act has he been recalled? For none; his conduct has been solemnly approved, not only by the present ministry, but also by a previous ministry, and by the House of Commons. For what, then, has he been recalled? Merely to silence the clamours of the Papineau faction.

But it will be gratification sufficient for His Excellency to know that, in his retirement, he will carry with him the admiration and thanks of every Briton in the colony, for his statesmanlike conduct in the government. He has been recalled for having done his duty, this is in keeping with the character of the present cabinet, but it establishes a precedent which must be alarming to his successor.

The province has been hitherto falsely represented as being in an agitated state; but now there is a certainty that it soon will be so in reality. The one side is composed of British; they have always professed their attachment to Britain, and are determined to maintain while they can, her supremacy in Canada, and the integrity of the empire. The other is composed of Frenchmen, men who do not hesitate to declare their hatred to every thing English, who have declared their intention of overthrowing the government, and of establishing a republic on its ruins—and they have declared it not only in newspapers in their pay, but in the resolutions of the majority of the Assembly.

The present ministry have taken part with the revolutionists, and the consequences must be dreadful if their system be followed up. If the £18,000 demanded by the Assembly, to pay the men employed by it, last summer, to agitate the province, be granted, if the Canada Tenures Act be repealed, and the detested feudal burdens of the Seigniories

be thrown upon the Townships, the English part of the province, if the Legislative Council be made elective, and thus the government thrown into the hands of a French democracy,—then let us be prepared for all hazards. If the British government give us up, we must rise for life and liberty; and we are possessed of power enough to secure both. It is the interest of the French leaders that the present government be continued, and it is the interest of the present government, to yield no further concessions. The French leaders know that they are powerless except in the fears of the British ministry. We possess the strength to make a rising effectual in our own favor, if we shall be driven to such a dreadful alternative, and we hold the power to crush any attempts at rebellion, on the part of the French leaders, if they shall proceed to put into execution the threats, to that effect, expressed in the resolutions of the Assembly. We possess the wealth of the province,—the sinews of war,—we hold all the military positions, and all the ammunition in the province, and the struggle would scarcely have commenced before we would be numerically superior.

The French party are powerless to agitate the province, since every attempt that they have made to do so has failed, and the British government has only to follow the course pointed out by justice and policy, to deny any further concessions, to maintain inviolate the honor of the British monarch, solemnly pledged to the Townships at their first settlement, to despise the factious clamors and empty boastings of the Papineau faction, and all will yet be well. But of this the French faction may be assured that NEVER WILL WE SUBMIT TO BE GOVERNED BY A REPUBLIC OF FRENCHMEN.—*Missisquoi Standard*.

## APPENDIX, NO. II.

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Translation of verses sung at the festival of St. Jean Baptiste by Mr. Ludger Duvernay, proprietor and publisher of "La Minerve"—with one verse in the original language.

Fair Canada—our country dear,  
See thy children here united—  
'Tis hope alone has brought us here,  
'To be by success requited.  
We all feel, by zeal inspired,  
We all repeat, with proved sincerity,  
That nought is by us required,  
But PEACE and LIBERTY.

In future deeds our hopes must lie—  
But more than hope our ills require ;  
Let us join prudence to audacity—  
An odious power let us despise ;  
And should our enemies arise,  
We'll conquer them by unanimity ;  
We've but one wish—but one desire—  
'Tis PEACE and LIBERTY.

One day, perhaps, tired of a King,  
And of his tyrannic sway—  
A voice throughout the land may ring  
And with thund'ring loudness say—  
This soil is mine—begone—away.  
Though martyrdom should be our fate,  
We'll spurn the laws of those we hate,  
And then together we'll repeat,  
PEACE and LIBERTY.

Peut-être un jour, notre habitant paisible  
 Se lassera du pesant joug d'un roi,  
 Il s'écria,.....mais de sa voix terrible :  
 " Sortez d'ici ;.....cette terre est à moi !  
 " Du Canada, je puis être un martyr,  
 Je n'obéis qu'aux lois que j'ai dicté :  
 " Pour son pays, un Canadien désire,  
 " La paix ! la liberté !".....(bis.)

Oh, ye the idols of your country's pride,  
 Whom Heaven, with all its gifts may bless,  
 Cease not, pause not, but with rapid strides  
 Lead to the goal of happiness.  
 VIGER & PAPINEAU, the great and wise,  
 Behold the incense of our love arise—  
 These words you've written in our history,  
 PEACE and LIBERTY.

We trust we have of means sufficient,  
 Of this, our country well may boast ;  
 Among our youth are sprigs efficient,  
 Whom danger will rally to their post.  
 Their prowess proves, that on our cold plains  
 Laurels are reaped by sons of bravery—  
 That true Canadians scorn all other chains,  
 THAN PEACE and LIBERTY.

PEACE and LIBERTY, our motto be,  
 Oh ! holy Saint, draw close the chain  
 That binds our hearts in amity ;  
 Should discord rage, oh ! let thy name  
 Bring back sweet peace and harmony—  
 And inspire us to chaunt again  
 That our only wish, our only aim,  
 IS PEACE and LIBERTY.

ERRATA.

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On the 22d page, 7th line—For “when the *larger* contains an eighteenth part of the ingredients of the *smaller*, and the *smaller* a fourth part of those of the *larger*” read “when the *smaller* contains an eighteenth part of the ingredients of the *larger*, and the *larger* a fourth part of those of the *smaller*.”

On the 138th page, 17th line—For *White* read *Wright*.

